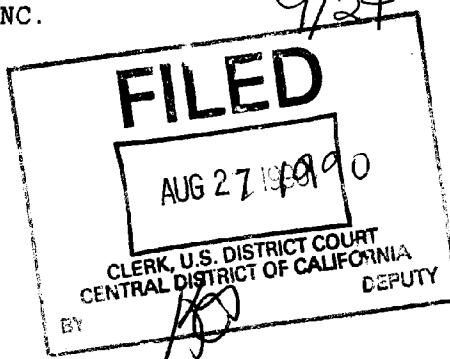


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1 MICHAEL S. MEZA, ESQ., BAR NO: 068366  
2 BRIDGMAN, MORDKIN, GOULD AND SHAPIRO, INC.  
3 17050 Bushard, Ste 200  
Fountain Valley, CA 92708  
(714) 963 5486

4 MARY KELLY, BAR NO:  
5 827 Moraga Dr.  
Bel Air, CA 90049  
(213) 472 7121

6 Attorneys for Defendant



7

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10

11 UNITED STATES OF AMERICA, ) CASE NO: CR 87-422(F)-ER  
12 )  
13 Plaintiff, ) NOTICE AND MOTION FOR NEW TRIAL,  
14 vs. ) RULE 33, FEDERAL RULES OF  
15 JUAN JOSE BERNABE-RAMIREZ, ) CRIMINAL PROCEDURE; JOINER;  
et al, ) DECLARATION OF MICHAEL S. MEZA;  
16 Defendants. ) AND POINTS AND AUTHORITIES  
----- )  
17 Date: 9/24/90  
Time: 1:30 p.m.  
Place: Courtroom

18

19 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE UNITED STATES  
20 OF AMERICA AND ITS ATTORNEY OF RECORD:

21

22 PLEASE TAKE NOTICE that on September 24, 1990, at 1:30  
23 p.m., or as soon thereafter as counsel may be heard in the  
24 courtroom of Edward Rafeedie, United States District Judge,  
25 defendant Juan Jose Bernabe-Ramirez will move this court for an  
26 order granting a new trial in the interest of justice on the  
27 grounds of jury misconduct and that the trial court erred in  
28 denying admission of defendant's Mexican declaration, Defendant's

10  
SEP 1 1990  
ENTERED ON COURT RAN

AUG 23 1990

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1 Exhibit IIII.

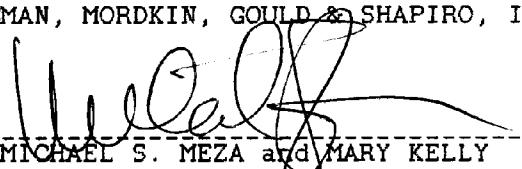
2 Defendant also joins in Co-Defendant Zuno's Sixth  
3 Amendment Motion to Dismiss based upon jury misconduct.

4 This motion is based upon Rule 33 of the Federal Rules of  
5 Criminal Procedure, upon the files and records in this case, upon  
6 the points and authorities attached hereto, and upon any further  
7 oral or documentary evidence as may be presented at the time of  
8 the hearing of this motion.

9 DATED: August 24, 1990

10 Respectfully submitted,

11 BRIDGMAN, MORDKIN, GOULD & SHAPIRO, INC.

12 BY:   
13 MICHAEL S. MEZA and MARY KELLY  
14 Attorneys for Juan Jose Bernabe-Ramirez

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1                            DECLARATION OF MICHAEL S. MEZA

2                            I, Michael S. Meza, hereby declare:

3                            (1) That I and Mary Kelly are the attorneys of record for  
4                            Juan Jose Bernabe-Ramirez, in the case entitled USA v. Bernabe-  
5                            Ramirez, et al., Case No: CR87-422(F)-ER, which is presently  
6                            calendared for sentencing on September 24, 1990, before the  
7                            Honorable Edward Rafeedie, Judge Presiding. A jury trial was had  
8                            in the above-entitled matter and on July 30, 1990, the jury  
9                            returned verdicts of guilty as to defendant Bernabe-Ramirez on  
10                           Counts 3, 6, and 8.

11  
12                           (2) This declaration is made in support of defendant's  
13                           motion for new trial pursuant to Federal Rules of Criminal  
14                           Procedure, Rule 33.

15  
16                           (3) On or about August 2, 1990, I was informed that the  
17                           court conducted an individual voir dire with each juror in the  
18                           above-entitled matter concerning the introduction of extrinsic  
19                           material, to wit: newspaper articles about the case, into the  
20                           deliberation process. A copy of the reporter's transcript of  
21                           said proceedings is attached and marked Exhibit "A."

22  
23                           (4) That one of the jurors, namely: William Parris,  
24                           indicated at pages 33 through 36 that some jurors had been  
25                           exposed to publicity concerning the Matta verdict, rendered on  
26                           July 26, 1990, and proceeded to discuss said publicity during  
27                           deliberations on July 27, 1990. Further, several jurors  
28                           acknowledged that newspapers were routinely brought into the jury

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1 room during the entire course of the trial and at one point the  
2 Matta verdict was discussed prior to the Bernabe-Ramirez verdict.  
3 At page 35 Sylvia Lopez was referred to as one of the sources  
4 which prompted the Matta discussion. Sylvia Lopez is a news  
5 reporter for local television station KNXT, Channel 2.

6  
7 (5) On August 2, I informed counsel for Zuno and Matta  
8 that the court had conducted said proceeding and that a  
9 transcript was to be prepared.

10

11 (6) On August 3, 1990, counsel for defendant Zuno filed a  
12 motion for a new trial in which defendant Bernabe-Ramirez joined.  
13 At that time the court denied defendant's joinder for lack of  
14 sufficient foundation.

15

16 (7) On August 11, 1990, Mary Kelly together with counsel  
17 for defendant Zuno interviewed juror William R. Parris. As a  
18 result of said interview, a Declaration was signed by Mr. Parris,  
19 (a copy of which is attached and marked Exhibit "B.")

20

21 (8) On or about May 7, 1990, the day prior to the  
22 scheduled date for trial in the above-entitled case, a newspaper  
23 article appeared in the L.A. Times (attached hereto and marked  
24 Exhibit "C") recounting the history of Operation Leyenda. The  
25 article also notes that Hector Berrellez, head of Operation  
26 Leyenda, received the Attorney General's Award for Exceptional  
27 Heroism.

28

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1                     (9) On or about May 25, 1990, at a hearing upon motion by  
2 the co-defendant Machain to dismiss the indictment, Agent  
3 Berrellez testified to his role in arresting co-defendant  
4 Alvarez-Machain. On or about May 27, 1990, the L.A. Times  
5 published reports that a warrant for the arrest of Agent  
6 Berrellez had been issued by the Mexican Government for Agent  
7 Berrellez' role in arresting Dr. Alvarez-Machain (attached hereto  
8 and marked Exhibit "D").

9  
10                  (10) Agent Berrellez was the focal witness against  
11 defendant Bernabe-Ramirez. He testified against defendant in  
12 late June and July. As the agent in charge of Operation Leyenda,  
13 Agent Berrellez assumed an undercover role as a major narcotics  
14 trafficker. He approved and orchestrated a plan whereby a  
15 confidential informant, Frederico Castel del Oro, would lure  
16 defendant to the United States and unexpectedly meet Agent  
17 Berrellez. Berrellez and defendant met on four occasions, each  
18 of which was electronically recorded. The Government played  
19 selected portions of these tapes. One of the selected replays,  
20 beamed on a 10 foot high screen, was defendant's assertion that  
21 he had deceived Mexican authorities by telling them that he was a  
22 "mere servant" for Fonseca. Agent Berrellez testified to  
23 portions which had not been played, offering his interpretation  
24 of the conversation, which in many instances was not supported by  
25 transcripts of the recordings.

26  
27                  (11) Defendant testified in his own defense and among  
28 other things testified that he was arrested by Mexican

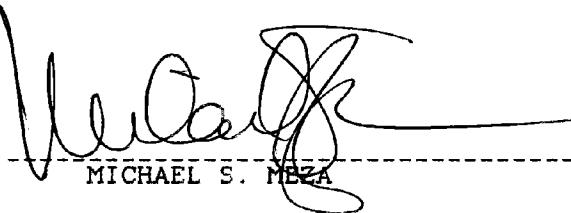
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1 authorities in April 1985. He was questioned and his answers  
2 were reduced to a writing in the form of a declaration, a copy of  
3 which was marked as defense Exhibit IIII (a copy of which is  
4 attached and marked Exhibit "E"), which he identified by its  
5 contents, his initials on every page, and his signature at the  
6 end.

7  
8 (12) The above information, concerning jury  
9 deliberations, was obtained only after a verdict had been  
10 rendered against Mr. Bernabe-Ramirez. Counsel for Bernabe-  
11 Ramirez have been diligent in securing said information and could  
12 not have known of it prior to the August 2, 1990 hearing.

13  
14 I declare under penalty of perjury that the foregoing is  
15 true and correct. Executed this 24th day of August, 1990, at  
16 Fountain Valley, California.

17  
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MICHAEL S. MEZA

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA

**HONORABLE EDWARD RAFEEDIE, DISTRICT COURT JUDGE PRESIDING**

COPY

CASE NO: CR 87-422(F)-ER

16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 THURSDAY, AUGUST 2, 1990; 1:30 P.M.

18 LOS ANGELES, CALIFORNIA

A

1 APPEARANCES OF COUNSEL:

2 FOR THE PLAINTIFF:

3 GARY A. FEESS,  
4 UNITED STATES ATTORNEY  
5 BY: MANUEL A. MEDRANO  
6 JOHN L. CARLTON  
7 ASSISTANT U.S. ATTORNEYS  
8 1200 UNITED STATES COURTHOUSE  
9 312 NORTH SPRING STREET  
10 LOS ANGELES, CALIFORNIA 90012  
11 (213) 894-0619/894-6682

12 FOR DEFENDANT JAVIER VASQUEZ-VELASCO:

13 FEDERAL LITIGATORS GROUP  
14 BY: GREGORY NICOLAYSEN, ESQ.  
15 8530 WILSHIRE BOULEVARD, STE. 404  
16 BEVERLY HILLS, CALIFORNIA 90211  
17 (213) 854-5135

18 ALSO PRESENT:

19 MARK KEMPLE, LAW CLERK  
20 MARCUS BIRD, LAW CLERK  
21 TIM SAITO, COURT CLERK

22

23

24

25

1                   LOS ANGELES + CALIFORNIA      THURSDAY, AUGUST 2, 1990

2                   + 1:30 P.M.

3

4                   (HEARING IN CHAMBERS.)

5                   THE COURT: HAVE A SEAT. LET THE RECORD SHOW THE  
6                   COURT HAS CONVENED IN CHAMBERS WITH COUNSEL ON THE REMAINING  
7                   DEFENDANT. THE COUNSEL FOR THE REMAINING DEFENDANT AND COUNSEL  
8                   FOR THE GOVERNMENT ARE PRESENT.

9                   JUST BEFORE NOON THE REPORTER REPORTED TO ME THAT  
10                  YESTERDAY WHEN SHE WAS IN THE JURY ROOM SHE OBSERVED A  
11                  NEWSPAPER WITH, APPARENTLY, A STORY ON THE ZUNO CONVICTION.  
12                  MAYBE I'LL ASK HER TO TELL YOU EXACTLY WHAT IT WAS SHE  
13                  OBSERVED.

14                  THE REPORTER: YOUR HONOR, I CAN'T WRITE AND TALK AT  
15                  THE SAME TIME.

16                  THE COURT: CAN YOU TAKE IT OFF THE TAPE?

17                  THE REPORTER: YES, PROBABLY, IF YOU ALL AGREE --

18                  THE COURT: OKAY. TELL EVERYBODY WHAT HAPPENED.

19                  (SEE CERTIFIED STATEMENT ATTACHED.)

20                  MR. NICOLAYSEN: I DISCUSSED THE MATTER THIS MORNING  
21                  WITH MS. CHURCHILL AND I DISCUSSED MY STRONG PREFERENCE -- AND  
22                  THAT'S HOW IT WAS BROUGHT TO YOUR ATTENTION.

23                  MS. CHURCHILL MADE IT CLEAR TO ME THAT SHE WANTED  
24                  SOME GUIDANCE ON HOW TO HANDLE A DILEMMA OF THIS KIND, AND  
25                  BEFORE BRINGING IT TO YOUR ATTENTION WANTED TO KNOW WHETHER, AS

1 A MATTER OF ETHICS, I FELT AS AN OFFICER OF THE COURT THAT THIS  
2 CLEARLY HAD TO BE BROUGHT TO THE COURT'S ATTENTION.

3 SHE THOUGHT YES, IT SOUNDS RIGHT TO DO THAT RIGHT  
4 AWAY. AND I WAS IN HER OFFICE --

5 THE COURT: DID SHE CONTACT YOU?

6 MR. NICOLAYSEN: I THINK I APPROACHED JULIE CHURCHILL  
7 AND JULIE ASKED WHAT I THOUGHT, AS A MATTER OF ETHICS, SHOULD  
8 BE DONE. I TOLD HER I THOUGHT IT WAS SERIOUS. AND WHEN I TOLD  
9 HER THAT THIS MORNING, SHE WENT AHEAD AND TRIED TO REACH ME BY  
10 PHONE --

11 THE REPORTER: THAT'S NOT CORRECT, YOUR HONOR. I  
12 WAS REPORTING IN COURT THIS MORNING AND WAS APPROACHED BY A  
13 MESSENGER OF MR. NICOLAYSEN'S THAT HE NEEDED TO SEE ME ABOUT  
14 SOMETHING RELATED TO THE CASE.

15 THE COURT: APPARENTLY YOU CALLED --

16 MR. NICOLAYSEN: I WAS INFORMED BY CYNTHIA PARKER  
17 LAST NIGHT. SHE TOLD ME THAT APPARENTLY IT SEEMED AS THOUGH  
18 THERE WAS A PAPER IN THE JURY ROOM AT THE TIME WHEN JULIE  
19 CHURCHILL WAS READING THE AGENT REYNOSO TESTIMONY YESTERDAY  
20 AFTERNOON. I WAS STUNNED, FOR OBVIOUS REASONS.

21 SHE SAID SHE REALLY DIDN'T HAVE DETAILS.

22 THE COURT: DID SHE TELL YOU WHERE SHE LEARNED OF IT?

23 MR. NICOLAYSEN: I PUT TWO AND TWO TOGETHER AND  
24 ASSUMED SHE HAD SPOKEN WITH SOMEBODY; EITHER JULIE OR ANOTHER  
25 LAWYER.

1           SHE MENTIONED THAT MIKE MEZA HAD LEARNED OF IT, AS  
2 WELL, AND I THOUGHT PERHAPS SHE HAD LEARNED OF IT FROM HIM. MY  
3 CONCERN WAS TO FIND OUT DIRECTLY FROM MS. CHURCHILL EXACTLY  
4 WHAT WENT ON BEFORE I SAID WE HAD TO BRING IT TO YOUR  
5 ATTENTION.

6           MS. CHURCHILL TOLD ME THAT IT WAS AN ARTICLE ON THE  
7 CAMARENA CASE THAT SEEMED TO HAVE BEEN READ BY ONE OF THE  
8 JURORS. TO ME THAT WAS CLEARLY A PROBLEM, SO I SAID YOU NEED  
9 TO KNOW ABOUT IT.

10          MR. MEDRANO: WHAT IS TROUBLING IS NOW TWO DEFENSE  
11 LAWYERS AND AN INTERPRETER KNOW ABOUT THIS EVEN BEFORE YOU DO  
12 TODAY.

13          THE COURT: THAT'S VERY TROUBLING TO ME AND YOU CAN  
14 BET THAT I HAVEN'T BEEN SILENT ON THAT SUBJECT. THAT DOESN'T  
15 CHANGE THE FACT THAT APPARENTLY THAT'S WHAT HAPPENED.

16          MR. MEDRANO: THERE IS A NOTION OR SOME APPEARANCE OF  
17 IMPROPRIETY HERE. I CAN'T PUT MY FINGER ON IT.

18          THE COURT: IT'S AN ACTUAL IMPROPRIETY.

19          MR. MEDRANO: IT'S VERY DISCONCERTING TO US.

20          I UNDERSTAND THAT THE INTERPRETER, CYNTHIA PARKER, IS  
21 RIGHT OUTSIDE IN THE COURTROOM HERE. PERHAPS WE SHOULD ASK HER  
22 WHAT IS GOING ON.

23          THE COURT: WE WILL ASK HER, IF SHE IS HERE.

24          MR. NICOLAYSEN: WHAT IS IMPORTANT TO KEEP IN MIND IS  
25 THE FACT THAT THERE WAS A SERIOUS CONCERN, AS I WAS PICKING IT

1 UP, THAT YOUR REPORTER WAS BEING PUT IN A VERY DIFFICULT  
2 SITUATION AND WAS SEEKING FEEDBACK ON HOW TO HANDLE THIS IN AN  
3 ETHICAL AND PROFESSIONAL MANNER.

4 I PICKED THAT UP VERY CLEARLY AND I DID NOT THINK  
5 THAT YOUR REPORTER WAS TRYING TO GO BEHIND THE GOVERNMENT'S  
6 BACK OR YOUR BACK, BUT SIMPLY WAS GOING THROUGH A DILEMMA THAT  
7 SHE HAD NEVER EXPERIENCED BEFORE. AND QUITE UNDERSTANDABLY,  
8 THESE ARE THE TYPES OF JUDGMENT CALLS THAT REPORTERS DO NOT  
9 ORDINARILY MAKE.

10 SO IN COMING TO ME, I FELT SHE WAS ASKING FOR MY  
11 FEEDBACK AND WANTED TO GET SOME GUIDANCE ON THIS. THE MOMENT I  
12 MADE IT CLEAR THAT IT CLEARLY HAD TO REACH YOUR ATTENTION,  
13 THERE WAS NO THOUGHT ABOUT GOING BEHIND THE GOVERNMENT'S BACK.  
14 THAT SIMPLY WAS NOT A CONSIDERATION. IT WAS CLEAR THAT ONCE IT  
15 WAS BROUGHT TO YOUR ATTENTION, THE GOVERNMENT CLEARLY WOULD BE  
16 BROUGHT IN.

17 SHE EVEN TRIED TO CALL YOU IMMEDIATELY FROM HER  
18 OFFICE BUT COULD NOT GET THROUGH TO YOU SO SHE WENT DOWN TO THE  
19 SECOND FLOOR TO SEE YOU.

20 THE COURT: I DON'T BELIEVE THERE WAS ANY EFFORT TO  
21 GO BEHIND THE GOVERNMENT'S BACK. I THINK IT WAS A VERY GREAT  
22 LAPSE OF JUDGMENT ON THE PART OF THE REPORTER, TOTALLY BEYOND  
23 MY BELIEF.

24 MR. NICOLAYSEN: IF I MAY JUST SAY THESE ARE  
25 DILEMMAS THAT ARE OBVIOUSLY VERY UNIQUE. I DON'T WANT TO SEE

1 THE REPORTER SUDDENLY BEING HIT WITH THE CRITICISM. I THINK  
2 THE REAL PROBLEM IS, OBVIOUSLY, THE NEWSPAPER IN THE ROOM AND  
3 WHY THE MARSHAL ALLOWED THAT TO HAPPEN AND WHY THE JURY ALLOWED  
4 IT TO HAPPEN.

5 I DON'T WANT TO SEE US DISTRACTED BECAUSE SHE DECIDED  
6 TO ASK A COLLEAGUE FOR ADVICE.

7 THE COURT: THAT'S FOR COURT TO TAKE CARE OF, THE  
8 REPORTER'S CONDUCT IN THIS CASE.

9 IS THIS INTERPRETER OUT THERE?

10 MR. KEMPLE I DIDN'T SEE HER OUT THERE. I COULD  
11 CHECK IN THE HALLWAY.

12 THE COURT: GO SEE IF SHE IS OUT THERE.

13 MR. MEDRANO: THIS IS NOT TO DEPRECATE THE  
14 SIGNIFICANCE OF THE ISSUE OF THE NEWSPAPER IN JURY ROOM; THAT'S  
15 SOMETHING THAT OBVIOUSLY YOU'LL ADDRESS SHORTLY, IS WHO HAS  
16 ACCESS TO THE JURY.

17 HOW MANY PEOPLE HAVE BEEN KNOWING ABOUT THIS KIND OF  
18 THING BEFORE YOU WERE ADVISED?

19 THE COURT: YOU'RE GETTING HYSTERICAL. NOBODY HAS  
20 ACCESS TO THE JURY. THE ONLY REASON THIS CAME OUT IS BECAUSE  
21 THE REPORTER WAS THERE READING A TRANSCRIPT.

22 MR. MEDRANO: I UNDERSTAND.

23 THE COURT: THE ONLY PROBLEM IS IT SHOULD HAVE BEEN  
24 REPORTED TO ME IMMEDIATELY AND IT WAS NOT.

25 MR. MEDRANO: YES.

1                   MR. NICOLAYSEN: DOESN'T THE COURT FEEL THAT SOME  
2 INQUIRY NEEDS TO BE MADE AS TO WHETHER THIS IS -- I DO SHARE  
3 MR. MEDRANO'S CONCERNS --

4                   MR. MEDRANO: MAY I JUST INQUIRE, YOUR HONOR. IT WAS  
5 THIS MORNING AT SOME POINT IN TIME TODAY THAT YOU WERE ADVISED?

6                   THE COURT: I WAS ADVISED ALSO THAT MR. MEZA HAD BEEN  
7 TOLD AND THAT MR. NICOLAYSEN KNEW AND HAD SUGGESTED THAT SHE  
8 TELL THE COURT ABOUT IT. THAT IS, THE REPORTER.

9                   ASSUMING -- WE'LL DEAL WITH HER, IF WE CAN LOCATE  
10 HER. WHAT DO YOU THINK SHOULD BE DONE WITH RESPECT TO THIS  
11 PROBLEM?

12                  MR. NICOLAYSEN: I WOULD ASK THAT WE HAVE A HEARING  
13 IN WHICH THE JURORS ARE ASKED ABOUT THE NEWSPAPER. AND I THINK  
14 THIS ALSO REFLECTS MR. MEDRANO'S CONCERNS.

15                  I THINK WE NEED TO GO BACK IN TIME AND DETERMINE  
16 WHETHER OR NOT THIS IS A ONCE ONLY SITUATION OR WHETHER THE  
17 JURY HAS HAD SOME KIND OF ONGOING CONTACT WITH THE MEDIA OR  
18 NEWSPAPER. WE MUST PRESERVE THE SANCTITY OF THE PROCESS.

19                  I ALSO THINK THAT THE MARSHALS NEED TO BE EXAMINED  
20 UNDER OATH IN COURT BY THE COURT TO DETERMINE HOW IT IS THAT  
21 THEY FAILED IN THEIR SUPERVISORY DUTIES IN ALLOWING THE  
22 NEWSPAPER IN THE ROOM.

23                  THE COURT: I HAVE ALREADY SPOKEN TO THE MARSHAL. HE  
24 APPARENTLY WAS UNAWARE.

25                  MR. NICOLAYSEN: I WOULD RESPECTFULLY SUBMIT THAT IT

1 WAS --

2 THE COURT: HE WAS UNAWARE IT WAS A PROBLEM.

3 MR. NICOLAYSEN: THAT WOULD BE MY SUGGESTION, BUT I  
4 WOULD RESPECTFULLY ASK THAT THIS BE DONE IN OPEN COURT ON THE  
5 RECORD.

6 THE COURT: I WANT TO KEEP IT HERE. I DON'T KNOW WHY  
7 WE SHOULD PUT IT IN OPEN COURT YET. I DON'T WANT ANY COMMENT  
8 ABOUT THIS TO ANYBODY WITH THE PRESS.

9 MR. NICOLAYSEN: I WON'T SPEAK TO THE PRESS ABOUT  
10 THIS.

11 MR. MEDRANO: I THINK, YOUR HONOR, WE WOULD DISAGREE  
12 SLIGHTLY WITH MR. NICOLAYSEN. I THINK SUCH A BROAD HEARING IS  
13 INAPPROPRIATE.

14 A GOOD STARTING POINT THAT THERE HAS BEEN NO  
15 MISCONDUCT BY THE JURY IS FOR US TO IDENTIFY THROUGH  
16 MS. CHURCHILL WHICH SPECIFIC JUROR HAD THE NEWSPAPER, BECAUSE  
17 EVIDENTLY, WE CAN APPROACH IT THROUGH A PARTICULAR JUROR, AND  
18 AS A STARTING POINT HAVE YOU TALK TO THAT JUROR INDIVIDUALLY AT  
19 THE BEGINNING AND HAVE A SENSE IF SHE WAS THE ONLY ONE AND IF  
20 THIS WAS ONE-TIME INCIDENT, AND THEN GO -- AND THEN GO FROM  
21 THERE AS TO WHETHER ANY BROADER TYPE OF INQUIRY WAS NECESSARY.

22 I DON'T THINK IT IS NECESSARY TO POLL AND QUESTION  
23 EACH AND EVERY JUROR, BUT MAYBE JUST START WITH THE ONE JUROR  
24 THAT WE CAN ATTRIBUTE OWNERSHIP OF THE NEWSPAPER.

25 THE COURT: CAN YOU IDENTIFY WHICH JUROR IT WAS?

1 THE REPORTER: THE BLOND WOMAN WHO SAT IN THE FRONT  
2 ROW WITH THE SHORT HAIR.

3 THE COURT: LINDA OVERHOLT.

4 THE REPORTER: YOUR HONOR, I THOUGHT IF I CAME DOWN  
5 IMMEDIATELY AND REPORTED HER, THE JURY WOULD BE HESITANT TO ASK  
6 FOR ANY OTHER READ BACKS WHILE THEY WERE DELIBERATING.

7 THE COURT: WE'LL GET INTO YOUR PROBLEM LATER. YOU  
8 DON'T HAVE TO DEFEND YOURSELF HERE.

9 MR. KEMPLE: THE INTERPRETER IS ON HER WAY UP FROM  
10 SOME OTHER COURT.

11 MR. MEDRANO: IN ADDITION TO THOSE PRESENT, MAY WE  
12 PASS ON TO MISS CYNTHIA PARKER, THE INTERPRETER, AND MR. MEZA  
13 THAT THIS IS NOT TO BE DISCUSSED WITH ANYONE UNLESS YOU'VE MADE  
14 SOME RESOLUTION OF IT, AT LEAST?

15 THE COURT: WE COULD PASS THAT ON TO THOSE  
16 INDIVIDUALS, AS WELL AS ANYONE ELSE WHO HAS KNOWLEDGE OF THIS,  
17 BECAUSE WE DON'T HAVE ALL THE FACTS YET.

18 MR. NICOLAYSEN: YOUR HONOR, HOW WOULD THE COURT LIKE  
19 TO HANDLE THE NOTIFICATION OF MR. MEDVENE AND STOLAR ON THIS OR  
20 DOES THE COURT REGARD THAT AS NOT NECESSARY AT THIS TIME?

21 THE COURT: I DON'T THINK THAT'S NECESSARY. THEY'LL  
22 HEAR ABOUT IT, I'M SURE, IF THEY HAVEN'T ALREADY.

23 MR. NICOLAYSEN: TO THE EXTENT --

24 THE COURT: HAVE YOU TOLD THEM?

25 MR. NICOLAYSEN: NO, I HAVE NOT. I WAS GOING TO

1 AWAIT YOUR FEEDBACK TODAY.

2 THE COURT: WHAT I'M CONCERNED ABOUT RIGHT NOW DEALS  
3 WITH YOUR CLIENT DURING THE DELIBERATIONS IN HIS CASE AND THAT  
4 THIS NEWSPAPER WAS SEEN.

5 THAT'S WHAT I'M MAINLY CONCERNED ABOUT SINCE THE JURY  
6 IS STILL OUT ON THAT.

7 MR. NICOLAYSEN: TO THE EXTENT THERE IS A POSSIBILITY  
8 THAT THE JURY HAS BEEN VIOLATING YOUR HONOR'S ADMONITIONS GOING  
9 BACK IN TIME, COUNSEL MIGHT WISH TO RAISE THAT WITH THE COURT.

10 THE COURT: THAT'S POSSIBLE. THEY'RE FREE TO DO SO.

11 MR. KEMPLE: DO YOU WANT THE BAILIFFS IN HERE?

12 THE COURT: I SHOULD TELL YOU -- I FORGOT THIS.  
13 AFTER THIS INCIDENT WAS REPORTED TO ME, I HAD THE BAILIFF GO UP  
14 AND SEE IF THERE WERE ANY OTHER NEWSPAPERS IN THE JURY ROOM,  
15 AND THEY BOUGHT THESE DOWN, MOST OF WHICH ARE TODAY'S.

16 MR. NICOLAYSEN: IS THAT FROM THE DELIBERATION ROOM?

17 THE COURT: FROM THE JURY ROOM -- WHICH SHOULD BE  
18 MARKED AS AN EXHIBIT.

19 I'M TALKING ABOUT THE JURY ROOM.

20 MR. NICOLAYSEN: WHERE THEY'RE DELIBERATING?

21 THE COURT: THAT IS RIGHT. THERE DOESN'T APPEAR TO  
22 BE ANYTHING IN THEM. ONE IS A JULY 31ST PAPER, YESTERDAY'S,  
23 WITH THAT PAGE HAVING BEEN CUT OUT, THE PAGE RELATING TO THE  
24 CASE HAS BEEN CUT OUT.

25 MR. KEMPLE: I HAVE THE INTERPRETER HERE.

1                   THE COURT: LET'S TALK TO HER FIRST.  
2                   (CYNTHIA PARKER ENTERS CHAMBERS.)  
3                   THE COURT: STATE YOUR NAME, PLEASE, FOR THE RECORD.  
4                   MS. PARKER: CYNTHIA PARKER.  
5                   THE COURT: MS. PARKER, I UNDERSTAND THAT YOU LEARNED  
6                   ABOUT A NEWSPAPER BEING IN THE JURY ROOM.  
7                   MS. PARKER: I DID. THAT'S ALL I LEARNED.  
8                   THE COURT: WHEN DID YOU FIRST LEARN THAT?  
9                   MS. PARKER: AROUND 11:30.  
10                  THE COURT: THIS MORNING?  
11                  MS. PARKER: YESTERDAY MORNING.  
12                  THE COURT: YESTERDAY MORNING?  
13                  MS. PARKER: RIGHT.  
14                  THE COURT: WHO DID YOU LEARN IT FROM?  
15                  MS. PARKER: IT WAS MENTIONED TO ME IN PASSING BY THE  
16                  COURT REPORTER.  
17                  THE COURT: YOU MEAN MS. CHURCHILL?  
18                  MS. PARKER: YES.  
19                  THE COURT: DO YOU REMEMBER WHAT SHE SAID TO YOU  
20                  ABOUT THAT?  
21                  MS. PARKER: JUST THAT THERE WAS A NEWSPAPER THERE.  
22                  AND I DIDN'T THINK ANYTHING OF IT AT THE TIME. I JUST THOUGHT  
23                  A NEWSPAPER -- AND THEN AS THE DAY WENT ON, TOWARD THE END OF  
24                  THE DAY, I THOUGHT THAT'S STRANGE. WHAT WAS IN THAT NEWSPAPER?  
25                  I STARTED THINKING -- AND I DIDN'T HAVE THE NEWSPAPER

1 YESTERDAY, SO WHEN I GOT HOME AND I LOOKED AT MY NEWSPAPER AND  
2 I DID SEE AN ARTICLE ABOUT THIS CASE --

3 THE COURT: DID YOU KNOW WHAT NEWSPAPER IT WAS?

4 MS. PARKER: I ASSUMED IT WAS THE L.A. TIMES. I  
5 DIDN'T KNOW THOUGH.

6 THE COURT: YOU DID NOT KNOW. YOU'RE TALKING ABOUT  
7 THE L.A. TIMES THAT YOU LOOKED AT?

8 MS. PARKER: RIGHT. THAT'S WHEN I GOT HOME THAT I  
9 LOOKED AT MY NEWSPAPER AND DID REALIZE THERE WAS AN ARTICLE AND  
10 IT WAS RIGHT ON THE FRONT PAGE, IN FACT.

11 THE COURT: THAT RELATED TO MR. ZUNO'S CONVICTION?

12 MS. PARKER: THAT IS CORRECT.

13 THE COURT: DID YOU THEN MENTION IT TO SOMEONE ELSE  
14 THAT YOU HAD HEARD ABOUT A NEWSPAPER?

15 MS. PARKER: RIGHT. TO MR. NICOLAYSEN.

16 THE COURT: ANYONE ELSE?

17 MS. PARKER: WELL, BEFORE I WENT HOME, I MENTIONED IT  
18 TO ONE OF THE OTHER INTERPRETERS.

19 THE COURT: WHO WAS THAT?

20 MS. PARKER: MR. OROSCO. AND, IN FACT, THERE WAS --  
21 HE WAS READING A NEWSPAPER AT THE TIME -- THAT'S WHY I  
22 MENTIONED IT TO HIM, BUT HE WASN'T READING THE L.A. TIMES.

23 I SAID THERE WAS A NEWSPAPER -- I THINK I SAID IT IN  
24 THE SAME WAY SHE HAD SAID -- AND HE WENT ON HIS ASSIGNMENT AND  
25 I WENT ON MINE AND NOTHING ELSE WAS SAID.

1 THE COURT: DO YOU HAVE ANY QUESTIONS?

2 MR. MEDRANO: MAY WE INQUIRE, YOUR HONOR, IF  
3 MS. PARKER TOLD ANYONE OTHER THAN MR. NICOLAYSEN AND MR. OROSCO  
4 ABOUT THIS? ANY FAMILY MEMBER, OTHER INTERPRETER,  
5 COLLEAGUE -- WHATEVER?

6 MS. PARKER: WELL, IN THE -- WHEN I LEFT  
7 MS. CHURCHILL'S OFFICE, I WENT DOWN TO LOOK FOR MR. NICOLAYSEN  
8 IN THE ATTORNEY ROOM AND HE WASN'T THERE AND MR. MEZA WAS THERE  
9 AND I DID MENTION IT TO HIM.

10 THE COURT: YOU MENTIONED IT TO MR. MEZA?

11 MS. PARKER: RIGHT.

12 THE COURT: HE WAS THE FIRST ONE YOU MENTIONED IT TO?

13 MS. PARKER: RIGHT. UH-HUH.

14 MR. MEDRANO: ANYONE ELSE OTHER THAN THOSE THREE?

15 MS. PARKER: NO. NO.

16 LATER SOMEONE MENTIONED TO ME THAT SOMETIMES THEY CUT  
17 OUT ARTICLES ABOUT THE CASE. SO THAT'S EVEN MORE REASON WHY I  
18 THOUGHT I WOULDN'T SAY ANYTHING ELSE AND, IN FACT, I MENTIONED  
19 THAT TO MR. NICOLAYSEN, TOO.

20 THE COURT: WHAT WAS THIS NOW?

21 MS. PARKER: IN JURY ROOMS SOMETIMES THEY GIVE THEM  
22 THE NEWSPAPER AND CUT OUT THE ARTICLE THAT HAS TO DO WITH THE  
23 CASE. AND I DID MENTION THAT TO MR. NICOLAYSEN AND THAT MAYBE  
24 THAT'S WHAT IT WAS, SO I DIDN'T THINK ANYTHING ELSE ABOUT IT.

25 THE COURT: ANYTHING ELSE?

1 MR. MEDRANO: NO. NOT BY US, YOUR HONOR.

2 THE COURT: THANK YOU, MS. PARKER.

3 MR. KEMPLE: DO YOU WANT THE BAILIFFS?

4 THE COURT: YES. BRING THEM IN.

5 WOULD YOU STATE YOUR NAMES FOR THE RECORD, PLEASE?

6 MR. MITCHELL: CLAY MITCHELL.

7 MS. ASHBRENNER: JAN C. ASHBRENNER.

8 THE COURT: YOU WERE THE BAILIFFS IN CHARGE OF THIS  
9 JURY; IS THAT RIGHT?

10 BOTH BAILIFFS: YES, SIR.

11 THE COURT: IT HAS BEEN REPORTED TO THE COURT THERE  
12 WAS A NEWSPAPER IN THERE. IN FACT, THERE HAVE BEEN THESE  
13 NEWSPAPERS YOU FOUND IN THERE TODAY, THIS STACK OF PAPERS. I  
14 ASKED YOU TO GO UP THERE AND SEE IF THERE WERE ANY PAPERS UP  
15 THERE AND YOU BROUGHT THESE DOWN.

16 BOTH BAILIFFS: YES, SIR.

17 THE COURT: DID YOU SEE THESE GOING INTO THE JURY  
18 ROOM?

19 MR. MITCHELL: NO, SIR.

20 THE COURT: DID YOU?

21 MS. ASHBRENNER: NO, SIR.

22 THE COURT: DID YOU AT ANY TIME SEE THEM GOING IN?

23 MS. ASHBRENNER: ONE OF THE JURORS HAS BEEN BRINGING  
24 CROSSWORD PUZZLES TO ME. NOW, I HAVEN'T NOTICED HIM TAKING THE  
25 PAPER IN. AT TIMES HE WOULD HAND ME THE INSERT.

1           THE COURT: YOU HAVEN'T SEEN ANY JUROR CARRY A  
2 NEWSPAPER INTO THE JURY ROOM?

3           MS. ASHBRENNER: IF I DID, IT DIDN'T REGISTER WHAT  
4 THEY WERE DOING.

5           THE COURT: YOU HAVEN'T SEEN ANY?

6           MR. MITCHELL: I DIDN'T REALLY NOTICE WHAT THEY WERE  
7 CARRYING IN THEIR HANDS.

8           THE COURT: I THINK IT SHOULD BE LOOKED FOR. THERE  
9 SHOULD BE NO NEWSPAPERS IN THE JURY ROOM AT ALL AND IT'S UP TO  
10 YOU TO SEE THAT THAT IS ENFORCED, THAT THEY DON'T GET ANY.

11          MR. MITCHELL: SOME OF THE WOMEN ARE CARRYING BAGS  
12 AND WE HAVEN'T BEEN LOOKING INTO THEIR BAGS.

13          THE COURT: YES. WELL, YOU'VE GOT TO SATISFY  
14 YOURSELF THERE ARE NO NEWSPAPERS GOING IN.

15          MR. MITCHELL: YES, SIR.

16          MS. ASHBRENNER: SURELY.

17          THE COURT: ANYTHING ELSE?

18          MR. MEDRANO: NO, YOUR HONOR.

19          MR. NICOLAYSEN: YOU HAVE NO WAY OF KNOWING HOW THEY  
20 MIGHT HAVE -- HOW MANY JURORS MIGHT HAVE READ ANY ARTICLES  
21 WHILE THEY'RE HERE IN THE BUILDING CONCERNING THE CAMARENA  
22 CASE?

23          MS. ASHBRENNER: THEY DON'T TAKE BREAKS, THEY DON'T  
24 WANDER THROUGHOUT THE BUILDING OR ANYTHING. THEY'RE ONLY OUT  
25 IN THE HALLWAY, SO UNLESS THEY HAVE READ SOMETHING PRIOR TO

1 COMING INTO THE COURTHOUSE --

2 THE COURT: IS IT A REGULAR PRACTICE FOR ANY OF THE  
3 JURORS TO BRING BAGS INTO THE JURY DELIBERATION ROOM?

4 MR. MITCHELL: THEIR PERSONAL BAGS THAT THEY BRING  
5 FROM HOME. WE DON'T -- WE HAVE NEVER WORKED A JURY ROOM; WE  
6 DON'T KNOW WHAT THE COMMON PRACTICE IS.

7 MR. NICOLAYSEN: THANK YOU.

8 MR. MITCHELL: IS THAT ALL, YOUR HONOR?

9 THE COURT: HOW IS IT THAT YOU'RE WORKING ON THIS  
10 JURY? WERE YOU ASSIGNED TO DO THAT BY THE PROTECTIVE SERVICE?  
11 HOW IS IT THAT -- YOU WERE BROUGHT IN FROM OUTSIDE TO DO THIS;  
12 WEREN'T YOU?

13 MR. MITCHELL: WE WERE PICKED OUT OF THE OFFICE, YES.

14 THE COURT: ARE YOU ASSIGNED TO THE LOCAL OFFICE?

15 MR. MITCHELL: YES, SIR.

16 MS. ASHBRENNER: YES, SIR.

17 THE COURT: OH. YOU'RE ALL RIGHT. WE HAD A TALK AT  
18 THE BEGINNING, I REMEMBER, BEFORE -- WHEN THE JURY WENT OUT --  
19 YOU AND I -- AND YOU ALSO -- WE DIDN'T TALK ABOUT NEWSPAPERS,  
20 THOUGH, DID WE?

21 MR. MITCHELL: NO, SIR.

22 THE COURT: MAYBE WE SHOULD HAVE.

23 ALL RIGHT. THANK YOU.

24 THE COURT: WELL, I THINK WE SHOULD BRING IN THIS  
25 JUROR NUMBER 6. ASK THE BAILIFF TO SEND HER DOWN, PLEASE.

1 MR. NICOLAYSEN: IS THIS SOMETHING THE COURT WANTS TO  
2 HANDLE OUTSIDE THE PRESENCE OF COUNSEL SINCE THERE IS STILL A  
3 DEFENDANT?

4 MR. MEDRANO: WE WOULD ASK TO BE PRESENT AND LET YOU  
5 HANDLE IT.

6 THE COURT: I DON'T KNOW THAT THAT MAKES ANY  
7 DIFFERENCE. I THINK YOU NEED TO BE PRESENT. I WANT YOU TO  
8 HEAR WHAT SHE HAS TO SAY AND TO ASK ANY QUESTIONS YOU MIGHT  
9 WANT.

10 MAYBE IT WOULD BE BETTER IF YOU FELLOWS SAT OVER  
11 THERE AND -- NOT LIKE AN INQUISITION. SIT OVER THERE.

12 (COUNSEL MOVE TO ANOTHER LOCATION IN CHAMBERS.)

13 MR. NICOLAYSEN: MY CONCERN WAS I DIDN'T WANT US TO  
14 PUT HER ON THE DEFENSIVE.

15 THE COURT: I WANT TO KNOW IF YOU HAVE ANY QUESTIONS.  
16 YOU MIGHT GIVE A NOTE TO MY LAW CLERK IF YOU HAVE ANY QUESTIONS  
17 THAT YOU WISH TO PURSUE AND HE'LL GIVE IT TO ME.

18 MR. NICOLAYSEN: THANK YOU.

19 THE COURT: WHAT IS HER NAME? OVERHOLT?

20 MR. CARLTON: LINDA OVERHOLT.

21 THE SECRETARY: THAT'S THE JUDGE, THE ONE THAT  
22 MR. MEZA IS IN FRONT OF.

23 THE COURT: I DON'T NEED HIM ANYMORE. I THINK WE CAN  
24 DISPENSE WITH HIS PRESENCE.

25 (BRIEF INTERRUPTION FOR TELEPHONE CALL)

1 (JUROR ENTERS CHAMBERS)

2 THE COURT: MRS. OVERHOLT?

3 MS. OVERHOLT: YES.

4 THE COURT: I'VE BROUGHT YOU DOWN HERE TO ASK YOU  
5 ABOUT THIS NEWSPAPER THAT YOU HAD IN THE JURY ROOM.

6 IT HAS BEEN REPORTED TO THE COURT THAT YOU WERE  
7 READING A NEWSPAPER THERE THAT CONTAINED AN ARTICLE ABOUT THIS  
8 CASE YESTERDAY.

9 NOW, WHAT ABOUT THAT? IS THAT TRUE?

10 MRS. OVERHOLT: NO. WE HAVE HAD NEWSPAPERS IN THE  
11 COURTROOM (SIC) ALL ALONG.

12 THE COURT: YOU MEAN THE JURY ROOM?

13 MRS. OVERHOLT: IN THE JURY ROOM. THE PEOPLE WHO  
14 COME IN EARLY GENERALLY BRING THEM IN AND PASS THEM AROUND.  
15 AND WHEN I GET THERE, I GENERALLY START WITH THE "VIEW"  
16 SECTION. THAT'S WHAT I READ FIRST.

17 THE COURT: DO THESE NEWSPAPERS CONTAIN STORIES ABOUT  
18 THIS CASE?

19 MRS. OVERHOLT: SOME OF THEM HAVE. AND IF THEY DO, I  
20 JUST DON'T READ THEM.

21 THE COURT: DID YOU READ A STORY YESTERDAY ABOUT THIS  
22 CASE?

23 MRS. OVERHOLT: YESTERDAY WAS THE STORY ABOUT THE  
24 RESULTS OF THE DECISION ON MR. ZUNO.

25 THE COURT: DID YOU READ THAT?

1 MRS. OVERHOLT: (SHAKING HEAD.)

2 THE COURT: YOU'RE NOT ANSWERING NOW.

3 MRS. OVERHOLT: NO. NO. I'M SORRY. NO, I DID NOT.

4 THE COURT: YOU DID NOT READ IT?

5 MRS. OVERHOLT: NO.

6 THE COURT: HAVE YOU EVER READ ANY ARTICLE ABOUT THIS  
7 CASE SINCE YOU HAVE BEEN A JUROR?

8 MRS. OVERHOLT: NO. EVEN IF I HAVE BEEN LOOKING AT  
9 THE PAPER, IF IT SAYS -- IF I STARTED TO READ SOMETHING, IF IT  
10 SAYS "CAMARENA", I PUT IT AWAY.

11 AT HOME MY HUSBAND HAS BEEN CUTTING THE ARTICLES OUT  
12 AND HE HAS THEM ALL IN A FILE FOLDER FOR ME SO WHEN I GET DONE,  
13 I CAN READ THEM ALL BECAUSE, OF COURSE, I'M INTERESTED IN WHAT  
14 THE PAPERS HAVE TO SAY.

15 THE COURT: WELL, OF COURSE, I'M -- I DON'T KNOW HOW  
16 MANY TIMES I'VE REMINDED THE JURORS --

17 MRS. OVERHOLT: JUST ABOUT EVERY TIME.

18 THE COURT: AND DO YOU THINK, IN GENERAL, THE JURORS  
19 HAVE ABIDED BY MY INSTRUCTION?

20 MRS. OVERHOLT: I DO, YES. I KNOW WE ALL HEARD THE  
21 FIRST DECISION WHEN WE WERE DEALING WITH MR. MATTA WHILE WE  
22 WERE GOING HOME ON THE RADIO. THAT WAS ON JUST ALMOST  
23 IMMEDIATELY.

24 BUT AFTER I REALIZED WHAT IT WAS THEY WERE TALKING  
25 ABOUT, I TURNED IT OFF. THEN ONE OF THE OTHER JURORS RIDES

1 HOME WITH ME -- OR SHE DID AT THAT TIME --

2 THE COURT: WHICH ONE IS THAT?

3 MRS. OVERHOLT: DENISE MC DANIELS. AND SHE'S NUMBER  
4 8, I THINK, OR 9. WE BOTH LIVE IN FULLERTON.

5 THE COURT: COUNSEL, DO YOU HAVE ANY OTHER QUESTIONS  
6 YOU WISH TO ASK ME OR HAVE ME ASK MRS. OVERHOLT?

7 MR. MEDRANO: WE DON'T, YOUR HONOR. NOT THE  
8 GOVERNMENT.

9 MR. NICOLAYSEN: NOTHING, YOUR HONOR.

10 THE COURT: MRS. OVERHOLT, I'D LIKE YOU TO RETURN TO  
11 THE JURY ROOM AND I DON'T WANT YOU TO DISCUSS WITH ANY MEMBER  
12 OF THE JURY WHAT TOOK PLACE HERE.

13 MR. OVERHOLT: I CAN'T TELL THEM WHY YOU CALLED ME  
14 DOWN?

15 THE COURT: NO, YOU CAN'T.

16 MRS. OVERHOLT: OKAY. I'LL TELL THEM YOU SAID SO.

17 THE COURT: THANK YOU.

18 MR. KEMPLE: SHALL I ESCORT THE JUROR THROUGH THE  
19 COURTROOM OR BACK OUT THROUGH THE HALL?

20 THE COURT: BACK THROUGH THE COURTROOM AND UPSTAIRS.

21 THANK YOU, MRS. OVERHOLT.

22 MRS. OVERHOLT: UH-HUH.

23 (JUROR EXCUSED.)

24 THE COURT: WELL, WHAT NEXT, GENTLEMEN?

25 MR. NICOLAYSEN: FOR THE RECORD, YOUR HONOR, IT

1 APPEARS AS THOUGH THERE MIGHT BE JUST A SLIGHT DISCREPANCY  
2 BETWEEN WHAT YOUR REPORTER OBSERVED AND WHAT MRS. OVERHOLT  
3 ADVISED THE COURT.

4 I JUST SAY THAT FOR THE RECORD, AND IT CONCERN ME  
5 ENOUGH TO BRING IT TO YOUR ATTENTION. IT DID SEEM TO ME AT THE  
6 TIME I LEARNED OF THIS FROM TALKING TO YOUR REPORTER THAT THERE  
7 WAS A GOOD FAITH BASIS FOR BELIEVING THAT THE JUROR MIGHT HAVE  
8 BEEN ACTUALLY READING THAT ARTICLE ON CAMARENA.

9 AND I ACKNOWLEDGE WHAT THE JUROR HAS TOLD COURT, SO I  
10 WOULD HAVE --

11 MR. CARLTON: I BELIEVE MS. CHURCHILL HAD SAID TODAY  
12 EARLIER THAT SHE COULDN'T TELL WHETHER THE JUROR WAS READING.

13 MR. NICOLAYSEN: MAYBE IT IS MY ERROR.

14 DO YOU THINK IT WOULD BE PRODUCTIVE TO ADMONISH THE  
15 JURY COLLECTIVELY AGAIN AT THIS POINT IN TIME?

16 THE COURT: I'D BE VERY GLAD TO DO THAT.

17 MR. NICOLAYSEN: THEY MIGHT BELIEVE THAT JUST BECAUSE  
18 ONE CASE IS FINISHED, THAT THAT THING NO LONGER APPLIES.

19 THE COURT: THAT COULD BE, YES. I WANT THEM TO  
20 UNDERSTAND THAT IT DOES APPLY.

21 MR. NICOLAYSEN: ON BEHALF OF MY CLIENT, I WOULD  
22 RESPECTFULLY MOVE THAT WE BRING THE JURY DOWN AND HAVE THE  
23 COURT PROVIDE THE STANDARD ADMONITIONS, JUST TO MAKE IT CLEAR  
24 THAT THIS IS JUST AS FORMAL AS IT HAS BEEN ALL ALONG.

25 THE COURT: I WOULD BE GLAD TO DO THAT.

1 MR. MEDRANO: THAT'S FINE WITH US, YOUR HONOR.

2 THE COURT: LET'S DO THAT THEN.

3 MR. MEDRANO: ANY THOUGHTS, YOUR HONOR? MAYBE IT'S  
4 MOOT NOW, IN LIGHT OF THE FACT YOU'LL BE ADMONISHING THEM  
5 AGAIN. DO WE NEED TO REACH OUT AND CONTACT MR. MEZA OR THE  
6 SECOND INTERPRETER NOT TO DISCUSS THIS WITH THE PRESS, IN  
7 PARTICULAR?

8 THE COURT: I THINK IT WOULD BE A GOOD IDEA. IF I  
9 COULD IMPOSE UPON MR. NICOLAYSEN, BECAUSE HE HAS WORKED CLOSELY  
10 WITH MR. OROSCO AND MR. MEZA; WOULD YOU DO THAT?

11 MR. NICOLAYSEN: I WOULD BE GLAD TO DO THAT.

12 MR. MEDRANO: WE CAN TAKE IT UPON OURSELVES TO BRING  
13 IN MR. MEZA.

14 THE COURT: I CAN BRING THEM IN HERE AND DIRECT THEM  
15 MYSELF. THAT IS MY INTENTION, THAT THIS MATTER NOT BE  
16 DISCUSSED.

17 MR. MEDRANO: WE WOULD PREFER THAT, YOUR HONOR.  
18 PERHAPS IF THEY COULD INFORMALLY JUST MEET WITH YOU AND BE  
19 ADMONISHED BY YOU --

20 THE COURT: MR. MEZA IS BEFORE THIS JUDGE WHO CALLED  
21 ME. THE JUDGE WAS CALLING TO SEE IF -- I FIRST TOLD MY STAFF  
22 TO GET MEZA HERE, BUT SINCE WE LEARNED THROUGH MS. PARKER HOW  
23 HE LEARNED OF THE MATTER AND THROUGH THE REPORTER, THEN THAT'S  
24 THE ONLY REASON I WANTED HIM HERE.

25 MR. NICOLAYSEN: I BELIEVE CYNTHIA PARKER IS

24

1 AVAILABLE AT THE INTERPRETER'S EXTENSION DOWNSTAIRS, WHICH IS  
2 4307.

3 MR. MEDRANO: AS IS MR. OROSCO.

4 THE COURT: SEE IF COULD YOU GET THAT INTERPRETER ON  
5 THE PHONE. 43 WHAT?

6 MR. NICOLAYSEN: 4307.

7 THE COURT: I WANT TO SEE SPEAK WITH CYNTHIA PARKER  
8 AND JOSE OROSCO ON THE PHONE.

9 MR. MEDRANO: WOULD IT BE POSSIBLE, PERHAPS, TO HAVE  
10 YOUR SECRETARY CALL MR. MEZA, JUDGE, AGAIN TO HAVE -- TO LEAVE  
11 A MESSAGE, PERHAPS, TO HAVE MR. MEZA DROP BY AND SEE YOU AFTER  
12 HE GETS OUT OF COURT TODAY, OR AT HIS CONVENIENCE?

13 PERHAPS HE WILL TALK TO YOU TELEPHONICALLY, AT A  
14 MINIMUM.

15 THE COURT: WE'LL LEAVE A MESSAGE WITH HIS OFFICE OR  
16 BEEPER OR SOMEPLACE.

17 MR. MEDRANO: THANK YOU, YOUR HONOR.

18 MR. KEMPLE: HERE'S MS. PARKER.

19 (CYNTHIA PARKER ENTERS CHAMBERS.)

20 THE COURT: I WANT YOU NOT TO DISCUSS THIS WITH  
21 ANYONE, WHAT HAPPENED HERE TODAY OR ANYTHING ABOUT THIS MATTER.

22 MS. PARKER: ABSOLUTELY.

23 THE COURT: NO PRESS OR NO ONE ELSE; ALL RIGHT?

24 MS. PARKER: VERY WELL.

25 THE COURT: THANK YOU.

1 WELL, THEN LET'S BRING THE JURY DOWN.

2 MR. CARLTON: DID YOU WANT THE OTHER ONE ON THE  
3 PHONE?

4 THE SECRETARY: I'M GETTING HIM. HE REPLACED HER, SO  
5 SHE'S GETTING HIM AND HE'LL BE ON THE PHONE IN JUST A MOMENT.

6 MR. NICOLAYSEN: FOR THE RECORD, YOUR HONOR, I WOULD  
7 ASK THAT THE COURT, IN ADMONISHING THE JURY, ASK THE JURY  
8 COLLECTIVELY WHETHER ANYONE HAS NOT COMPLIED WITH THE COURT'S  
9 ONGOING ADMONITION AND HAS READ ANY ARTICLES ON THE CAMARENA  
10 CASE.

11 I REALIZE THAT PUTS JURORS ON THE DEFENSIVE --

12 THE COURT: I DON'T LIKE TO DO THAT IN OPEN COURT.  
13 IF YOU WANT TO DO THAT, WE'LL DO IT INDIVIDUALLY.

14 MR. NICOLAYSEN: I CERTAINLY FEEL, AS COUNSEL --

15 THE COURT: EVEN IF THEY HAD, I'M NOT SURE THAT THAT  
16 IS NECESSARY. MOST OF THESE ARTICLES THAT HAVE APPEARED THAT I  
17 HAVE SEEN ARE BASICALLY REPORTING WHAT TOOK PLACE IN COURT.

18 MR. NICOLAYSEN: I'M NOT INCLINED TO AGREE WITH THAT  
19 CHARACTERIZATION -- AT LEAST WITH THE L.A. TIMES. THERE SEEMS  
20 TO BE A FAIR AMOUNT OF SELECTIVE REPORTING AND EMPHASIS ON  
21 CERTAIN TESTIMONY; AND OCCASIONALLY, CERTAIN INACCURACIES.

22 I WOULD ASK THAT THERE BE SOME INQUIRY.

23 THE COURT: I'M NOT GOING TO DO IT IN OPEN COURT.

24 MR. MEDRANO: ON THAT POINT, YOUR HONOR, JUST SO YOU  
25 KNOW WHAT OUR POSITION IS, MAYBE WE CAN DO IT IN OPEN COURT.

1 AND THEN IF ANYBODY HAS, WE'LL TALK TO THEM INDIVIDUALLY.

2 THE COURT: I'M NOT SO SURE THAT THAT IS NECESSARY IN  
3 LIGHT OF THE SHOWING WE HAVE HAD THUS FAR.

4 MRS. OVERHOLT ASSURED YOU THAT SHE HAS NOT READ  
5 ANYTHING. SHE HAS ASSURED YOU THAT AS FAR AS SHE KNOWS, NO ONE  
6 ELSE HAS READ ANYTHING ABOUT THAT CASE. I'M NOT SO SURE THERE  
7 HAS BEEN ANY MINIMUM SHOWING TO EMBARK ON THIS TYPE OF EFFORT  
8 TO TALK TO EVERYONE INDIVIDUALLY, BUT THAT'S BASICALLY OUR  
9 POSITION, FOR WHAT IT IS WORTH, YOUR HONOR.

10 THE COURT: WELL, I THINK WE'LL DO IT THE OTHER WAY.  
11 OF COURSE, THAT MAKES IT PUBLIC THEN.

12 MR. MEDRANO: THEN WE PREFER IT BE DONE IN CHAMBERS.

13 THE COURT: TO EXCLUDE THE PUBLIC FROM THE COURTROOM  
14 WOULD BE THE APPROPRIATE THING TO DO.

15 IT MAKES IT PUBLIC TO THE EXTENT THAT THE OTHER  
16 JURORS WILL NOW BE ASKED WHY MRS. OVERHOLT WAS BROUGHT DOWN TO  
17 CHAMBERS, BUT WE DON'T NEED TO MAKE THE COURTROOM AVAILABLE TO  
18 THE MEDIA OR THE PUBLIC FOR PURPOSES OF THIS INQUIRY.

19 I THINK THE ONLY WAY TO HANDLE IT IS TO BRING THEM  
20 DOWN ONE AT A TIME.

21 MR. NICOLAYSEN: TO CHAMBERS?

22 THE COURT: YES. I THINK THAT'S THE BEST WAY.

23 MR. CARLTON: VERY WELL, YOUR HONOR.

24 MR. NICOLAYSEN: THANK YOU. I APPRECIATE THE COURT  
25 TAKING THE TIME.

1 THE COURT: YOU GENTLEMEN CAN SIT OVER THERE. IF YOU  
2 HAVE ANY QUESTIONS, I'LL ASK YOU IF YOU HAVE ANY QUESTIONS.

3 WE'RE GOING TO START WITH JUROR NUMBER ONE THERE.

4 I THINK WE'LL MAKE A TRANSCRIPT OF THESE PROCEEDINGS  
5 AND HAVE IT AVAILABLE FOR ALL OTHER COUNSEL IN THIS CASE.

6 (JUROR ENTERS CHAMBERS)

7 THE COURT: THIS IS MYRTLE HINES. COME IN, MS.  
8 HINES. HAVE A SEAT THERE, WON'T YOU?

9 I JUST WANT TO ASK YOU A FEW QUESTIONS.

10 WOULD YOU STATE YOUR NAME FOR THE RECORD, JUST SO  
11 WE'LL HAVE IT?

12 MS. HINES: MYRTLE HINES.

13 THE COURT: MS. HINES, IT HAS BEEN REPORTED TO THE  
14 COURT THAT THERE WAS A NEWSPAPER IN THE JURY ROOM YESTERDAY  
15 CONTAINING A STORY THAT RELATED TO THIS CASE.

16 DID YOU HAPPEN TO SEE IT BY ANY CHANCE?

17 MS. HINES: DID I SEE A NEWSPAPER IN OUR SECTION OR  
18 DID I LOOK AT AN ARTICLE OR WHAT?

19 THE COURT: DID YOU SEE A NEWSPAPER IN THE JURY ROOM  
20 YESTERDAY?

21 MS. HINES: I NOTICED THAT SOME OF THE JURORS DID  
22 HAVE NEWSPAPERS. THEY BRING THEM IN WITH THEM IN THE MORNING.

23 THE COURT: DID YOU, YOURSELF -- HAVE YOU DURING THE  
24 TIME OF THIS TRIAL READ ANY ARTICLE IN ANY NEWSPAPER AT ANY  
25 TIME ABOUT THIS CASE?

1 MS. HINES: NO, I HAVEN'T.

2 THE COURT: YOU HAVEN'T. YOU HAVE AVOIDED DOING THAT  
3 BECAUSE OF THE COURT'S INSTRUCTION?

4 MS. HINES: EXACTLY, SIR.

5 THE COURT: AND YOU HAVE NOT DONE THAT IN THE JURY  
6 ROOM?

7 MS. HINES: NO, I HAVE NOT. I DID LOOK AT THE SPORTS  
8 SECTION, THOUGH.

9 THE COURT: THAT'S PERMISSIBLE. BUT IT WON'T BE ANY  
10 MORE BECAUSE WE ARE NOT GOING TO LET NEWSPAPERS INTO THE JURY  
11 ROOM. THEY SHOULD NOT BE IN THERE BECAUSE OF THE APPEARANCE OF  
12 IT.

13 MS. HINES: OKAY.

14 THE COURT: ALL RIGHT. COUNSEL, DO YOU WISH TO HAVE  
15 ME ASK MS. HINES ANYTHING ELSE?

16 MR. NICOLAYSEN: NOTHING, YOUR HONOR. THANK YOU.

17 THE COURT: PLEASE RETURN TO THE JURY ROOM AND DON'T  
18 TELL THE OTHER JURORS WHAT THIS WAS ABOUT. WE'RE GOING TO TALK  
19 TO EACH ONE OF THEM INDIVIDUALLY ANYWAY.

20 MS. HINES: ALL RIGHT, SIR.

21 THE COURT: THANK YOU VERY MUCH.

22 THE SECRETARY: THE OTHER INTERPRETER, JOSE OROSCO,  
23 IS ON THE LINE.

24 (THE JUDGE SPEAKING ON THE TELEPHONE)

25 THE COURT: JOSE, MS. PARKER HAS TOLD US ABOUT THIS

1 NEWSPAPER IN THE JURY ROOM THAT SHE TOLD YOU ABOUT. I JUST  
2 WANT TO TELL YOU THAT YOU'RE NOT TO DISCUSS THAT WITH ANYONE.  
3 NO NEWSPAPER PEOPLE, NOBODY ELSE. OKAY? ALL RIGHT.

4 MR. MEDRANO: THANK YOU.

5 (JUROR ENTERS CHAMBERS)

6 THE COURT: MR. WEST, COME IN. HOW ARE YOU, SIR?

7 MR. WEST: PRETTY GOOD.

8 THE COURT: HAVE A SEAT, WON'T YOU?

9 MR. WEST, IT HAS BEEN REPORTED TO THE COURT --  
10 INCIDENTALLY, YOU'RE JOHN WEST; IS THAT CORRECT, FOR THE  
11 RECORD?

12 MR. WEST: YES.

13 THE COURT: IT HAS BEEN REPORTED TO THE COURT ABOUT  
14 NEWSPAPERS BEING IN THE -- ONE, IN PARTICULAR, WAS OBSERVED IN  
15 THE JURY ROOM YESTERDAY, WHICH CONTAINED A STORY ABOUT THIS  
16 CASE.

17 MR. WEST: YES.

18 THE COURT: WHAT I WANTED TO ASK YOU IS WHETHER OR  
19 NOT YOU, YOURSELF, HAVE READ ANY ARTICLES THAT RELATED TO THIS  
20 CASE DURING THE TIME THAT THE JURY HAD BEEN DELIBERATING?

21 MR. WEST: THROUGH THE ENTIRE CASE?

22 THE COURT: YES.

23 MR. WEST: NO, SIR.

24 THE COURT: YOU HAVE NOT?

25 MR. WEST: NO.

1 THE COURT: YOU HAVE COMPLIED WITH THE COURT'S ORDER  
2 IN THAT RESPECT; IS THAT RIGHT?

3 MR. WEST: YES.

4 THE COURT: ANY QUESTIONS, COUNSEL?

5 MR. MEDRANO: NO, YOUR HONOR. THANK YOU.

6 MR. NICOLAYSEN: ONLY WHETHER MR. WEST OBSERVED ANY  
7 OF THE JURORS READING AN ARTICLE YESTERDAY IN THE JURY ROOM  
8 CONCERNING THIS CASE.

9 MR. WEST: NO.

10 THE COURT: DID YOU OBSERVE ANYONE?

11 MR. WEST: NO.

12 THE COURT: YOU DID NOT?

13 MR. WEST: NO.

14 THE COURT: IS IT YOUR IMPRESSION THAT THE JURORS ARE  
15 LIVING UP TO THAT ORDER BY THE COURT?

16 MR. WEST: YES, SIR.

17 THE COURT: ALL RIGHT, SIR. THANK YOU.

18 ALL RIGHT. I'LL ASK YOU NOT TO DISCUSS WHAT TOOK  
19 PLACE HERE WITH THE OTHER JURORS. WE ARE GOING TO TALK TO THEM  
20 EACH INDIVIDUALLY ANYWAY.

21 MR. WEST: THANK YOU, YOUR HONOR.

22 MR. NICOLAYSEN: WOULD IT MAKE SENSE TO BRING THEM  
23 DOWN AS A GROUP AND HAVE THEM WAIT IN YOUR RECEIVING LOUNGE?

24 THE COURT: THERE IS NOT ENOUGH ROOM.

25 (JUROR ENTERS CHAMBERS.)

1 THE COURT: COME IN, MR. THOMPSON. HOW ARE YOU?

2 MR. THOMPSON: JUST FINE.

3 THE COURT: HAVE A SEAT THERE, WON'T YOU?

4 MR. THOMPSON: ALL RIGHT.

5 THE COURT: NATHANIAN THOMPSON?

6 MR. THOMPSON: RIGHT.

7 THE COURT: MR. THOMPSON, THE REASON I CALLED YOU  
8 DOWN HERE IS BECAUSE IT HAS BEEN REPORTED TO THE COURT THAT  
9 THERE WAS A NEWSPAPER IN THE JURY ROOM YESTERDAY WITH A STORY  
10 ABOUT THIS CASE AND I WANT TO KNOW IF YOU READ ANY ARTICLE  
11 ABOUT THIS CASE?

12 MR. THOMPSON: NO, I DON'T READ THE PAPERS.

13 THE COURT: YOU DON'T READ THE PAPER AT ALL?

14 MR. THOMPSON: ONLY THE SPORTS.

15 THE COURT: ONLY THE SPORTS?

16 MR. THOMPSON: YEP.

17 THE COURT: SO YOU HAVE NOT READ ANY ARTICLE ABOUT  
18 THIS CASE IN THE JURY ROOM?

19 MR. THOMPSON: NO, I HAVE NOT.

20 THE COURT: ALL RIGHT. ANY QUESTIONS?

21 MR. MEDRANO: NO, YOUR HONOR.

22 MR. NICOLAYSEN: NO, YOUR HONOR. THANK YOU.

23 THE COURT: ALL RIGHT, MR. THOMPSON. I APPRECIATE  
24 YOUR COMING DOWN. DON'T DISCUSS WHAT TOOK PLACE HERE WITH THE  
25 OTHER JURORS. WE'RE GOING TO TALK TO EACH OF THEM

1 INDIVIDUALLY.

2 MR. THOMPSON: ALL RIGHT.

3 THE COURT: THANK YOU, SIR.

4 MR. NICOLAYSEN: I WOULD ASK IF THE COURT COULD, AS A  
5 STANDARD QUESTION, ASK IF THEY HAVE -- HE OR SHE -- OBSERVED  
6 ANYONE ELSE READING ARTICLES ON THIS CASE.

7 (JUROR ENTERS CHAMBERS)

8 THE COURT: MR. MARQUEZ, COME IN. HAVE A SEAT THERE,  
9 WON'T YOU?

10 THIS IS JUROR FRANK MARQUEZ. MR. MARQUEZ, IT HAS  
11 BEEN REPORTED TO THE COURT THAT THERE WAS A NEWSPAPER IN THE  
12 JURY ROOM YESTERDAY CONTAINING AN ARTICLE RELATING TO THIS  
13 CASE.

14 WERE YOU AWARE OF THAT?

15 MR. MARQUEZ: I KNOW THERE WAS NEWSPAPERS, BUT I  
16 DON'T READ IT. I READ THE SPORTS AND THAT'S ABOUT IT.

17 THE COURT: YOU DID NOT READ ANY ARTICLE RELATING TO  
18 THIS CASE?

19 MR. MARQUEZ: THAT'S NOT MY PAPER. I JUST GET  
20 WHATEVER IS LEFT -- THE SPORTS PAGE.

21 THE COURT: DID YOU SEE ANYONE ELSE READING ANY  
22 ARTICLE RELATING TO THIS CASE?

23 MR. MARQUEZ: I DIDN'T SEE NOBODY READING IT. LIKE I  
24 SAID, WE TAKE BREAKS EVERY HOUR, A FIVE-MINUTE BREAK, AND WE  
25 JUST SKIM THROUGH THE SPORTS PAGE.

1           THE COURT: SO YOU, YOURSELF, HAVE NOT READ ANYTHING  
2 ABOUT THIS CASE AT ANY TIME; IS THAT RIGHT?

3           MR. MARQUEZ: NO. NO.

4           THE COURT: YOU KNOW IT IS STILL THE RULE. EVEN  
5 THOUGH SOME OF THE CASE IS OVER WITH, NO ONE IS TO READ  
6 ANYTHING ABOUT THE CASE.

7           MR. MARQUEZ: I UNDERSTAND.

8           THE COURT: ALL RIGHT, SIR.

9           ANYTHING FURTHER?

10          MR. MEDRANO: NOTHING, YOUR HONOR.

11          THE COURT: THAT'S ALL WE NEED, MR. MARQUEZ. DON'T  
12 DISCUSS IT WITH THE OTHER JURORS. WE'RE GOING TO TALK TO EACH  
13 OF THEM ANYWAY.

14          MR. MARQUEZ: RIGHT.

15          THE COURT: THANK YOU.

16          (JUROR ENTERS CHAMBERS)

17          THE COURT: MR. PARRIS. COME IN AND SIT DOWN, WON'T  
18 YOU? THIS IS JUROR WILLIAM PARRIS.

19          MR. PARRIS, IT HAS BEEN REPORTED TO THE COURT THAT IN  
20 THE JURY ROOM YESTERDAY THERE WAS A NEWSPAPER CONTAINING AN  
21 ARTICLE RELATING TO THIS CASE.

22          DID YOU SEE THAT NEWSPAPER BY ANY CHANCE?

23          MR. PARRIS: I SAW THE NEWSPAPER, YES, SIR.

24          THE COURT: DID YOU READ THE ARTICLE?

25          MR. PARRIS: NO, SIR.

1 THE COURT: DID YOU SEE ANYONE ELSE READ THE ARTICLE?

2 MR. PARRIS: NOT THE ARTICLE, NO.

3 THE COURT: IS IT YOUR IMPRESSION THAT THE JURORS ARE  
4 COMPLYING WITH THE COURT'S ORDER ABOUT NOT READING ANYTHING  
5 RELATING TO THIS CASE?

6 MR. PARRIS: IT IS MY IMPRESSION THAT THERE ARE  
7 JURORS WHO HAVE READ THE NEWSPAPER. IT APPEARS TO ME -- IT IS  
8 NOT STATED THAT ANYONE GETS UP AND SAYS "I READ THE NEWSPAPER  
9 AND THIS IS WHAT IT SAYS", BUT IN THE PAST ON A NUMBER OF  
10 OCCASIONS, THERE SEEMED TO BE DISCUSSIONS ABOUT THINGS THAT  
11 APPEAR TO HAVE COME FROM SOMEPLACE OTHER THAN WHAT WE HEARD.

12 AND WHETHER IT CAME FROM THE NEWS OR THE NEWSPAPER, I  
13 COULDN'T SAY, BUT I HAVE TO SAY THAT I FEEL THAT SOME JURORS  
14 SOMEHOW -- WHETHER IT IS BEING TOLD TO THEM BY SOMEBODY OR  
15 SOMETHING -- THERE IS INFORMATION BEING BROUGHT IN, YES.

16 THE COURT: WHAT KIND OF INFORMATION?

17 MR. PARRIS: IT JUST SEEMS LIKE WHATEVER WE'VE DONE,  
18 ESPECIALLY AFTER THE -- AFTER WE HAVE GIVEN OUR VERDICTS, THERE  
19 IS A LOT OF DISCUSSION ABOUT THAT THE NEXT DAY.

20 THE COURT: WHAT KIND OF DISCUSSION?

21 MR. PARRIS: THERE WAS DISCUSSION ABOUT THE JURORS  
22 BEING STUPID AND THAT THE MEDIA THOUGHT THAT THE JURORS WERE  
23 STUPID, AND THAT WAS STATED AND WE HAD A DISCUSSION ABOUT THAT.

24 THE COURT: WHAT WAS SAID ABOUT IT?

25 MR. PARRIS: IT WAS -- I BELIEVE ONE PERSON STATED

1 THAT SYLVIA LOPEZ HAD MADE A COMMENT THAT WE WERE STUPID OR  
2 CONFUSED OR SOMETHING LIKE THAT.

3 THE COURT: WHO'S SYLVIA LOPEZ? DO YOU UNDERSTAND  
4 WHO THAT IS?

5 MR. PARRIS: I DON'T HAVE A TELEVISION AT MY HOUSE SO  
6 I DON'T KNOW WHO SHE WAS,.. BUT THAT WAS ASKED. AND SHE SAID SHE  
7 WAS A NEWS REPORTER ON THE T.V.

8 THE COURT: WELL, WERE YOU IN ANY WAY AFFECTED IN THE  
9 WAY YOU HAVE MADE YOUR DECISIONS IN THIS CASE BY ANY SUCH  
10 DISCUSSIONS?

11 MR. PARRIS: THE ONLY WAY I WAS AFFECTED IS I WENT  
12 BACK AND READ THE INSTRUCTIONS AGAIN TO SEE IF I HAVE, IN  
13 FACT -- IF I HAD BEEN STUPID.

14 AND WAS I AFFECTED IN MY DECISION; NO, I DON'T THINK  
15 I WAS.

16 THE COURT: YOU MADE YOUR DECISION BASED ON YOUR  
17 CONSCIENTIOUS BELIEF THAT THEY WERE THE RIGHT DECISION?

18 MR. PARRIS: ABSOLUTELY. ABSOLUTELY.

19 THE COURT: DO YOU THINK THAT'S THE CASE WITH THE  
20 OTHER JURORS, AS WELL?

21 MR. PARRIS: I THINK SO. IF ANYTHING, THE  
22 CONVERSATION MADE EVERYONE JUST KIND OF SLOW DOWN AND GO BACK.  
23 LIKE I SAID, WE REREAD THE INSTRUCTIONS AGAIN AND WE DISCUSSED  
24 THE INSTRUCTIONS A LITTLE BIT CLEARER.

25 WE DON'T SEE ANY REASON WHY WE'RE STUPID. IT SEEMS

1 WE DID THE RIGHT THING AND THEN WE WENT ON.

2 THE COURT: OF COURSE. THAT'S RIGHT, SIR.

3 ANY QUESTIONS HERE?

4 MR. MEDRANO: NO, YOUR HONOR. THANK YOU.

5 THE COURT: ALL RIGHT, MR. PARRIS. THANK YOU VERY  
6 MUCH.

7 MR. NICOLAYSEN: I WANTED TO JUST ASK -- I HAD A  
8 QUESTION FOR YOUR CLERK.

9 THE COURT: JUST A MOMENT.

10 (PAPER HANDED TO THE JUDGE.)

11 THE COURT: DO YOU BELIEVE ANY OF THE JURORS HAVE  
12 BEEN INFLUENCED -- BECAUSE OF INFORMATION -- INFLUENCED TO VOTE  
13 IN A CERTAIN WAY BECAUSE OF INFORMATION BROUGHT IN FROM THE  
14 OUTSIDE?

15 MR. PARRIS: NO, I DON'T.

16 THE COURT: ALL RIGHT, SIR. THANK YOU.

17 MR. NICOLAYSEN: THANK YOU, YOUR HONOR.

18 (JUROR ENTERS CHAMBERS)

19 THE COURT: COME IN, MR. ESPINOZA. PLEASE SIT DOWN  
20 THERE, WON'T YOU, MR. ESPINOZA.

21 I CALLED YOU HERE TO ASK YOU ABOUT A REPORT THAT THE  
22 COURT RECEIVED THAT THERE WAS A NEWSPAPER IN THE JURY ROOM  
23 YESTERDAY WHICH CONTAINED A STORY ABOUT THIS CASE.

24 I WANTED TO KNOW IF YOU HAD -- DID YOU, YOURSELF, SEE  
25 IT?

1 MR. ESPINOZA: NO, I DIDN'T.

2 THE COURT: DID YOU READ ANY STORY YOURSELF IN THE  
3 JURY ROOM ABOUT THIS CASE?

4 MR. ESPINOZA: NO, I DIDN'T.

5 THE COURT: DO YOU KNOW -- DID YOU SEE ANY OTHER  
6 JUROR READING ANYTHING ABOUT THIS CASE?

7 MR. ESPINOZA: NO.

8 THE COURT: IS IT YOUR GENERAL IMPRESSION THAT THE  
9 JURORS ARE AVOIDING READING AND LISTENING TO ANYTHING ABOUT THE  
10 CASE?

11 MR. ESPINOZA: I THINK THEY ARE.

12 THE COURT: YOU THINK THEY ARE?

13 MR. ESPINOZA: THAT'S MY OPINION.

14 THE COURT: ALL RIGHT. AND YOU, YOURSELF, HAVE NOT?  
15 YOU FOLLOWED THE COURT'S INSTRUCTION IN THAT REGARD; IS THAT  
16 RIGHT?

17 MR. ESPINOZA: YES, I HAVE. I MEAN I AM ONE OF THE  
18 PEOPLE THAT BRINGS IN A NEWSPAPER IN THE MORNING, BUT I WAS  
19 NEVER UNDER THE IMPRESSION THEY WERE NOT ALLOWED IN THE ROOM.

20 WE DON'T READ THE ARTICLES -- ANYTHING THAT PERTAINS  
21 TO THE TRIAL. WE STAY AWAY FROM THAT, BUT I WAS NEVER UNDER  
22 THE IMPRESSION THAT WE WERE ALLOWED NOT TO BRING THEM IN.

23 THE COURT: THAT'S OUR FAULT, NOT YOURS.

24 MR. ESPINOZA: WE ALWAYS HAD BROUGHT THEM IN.

25 THE COURT: DURING THE TRIAL?

1                   MR. ESPINOZA: YES, AND WE WOULD READ -- LIKE NOW  
2 THEY GO IN THERE, IT'S BASICALLY NOBODY READS THEM BECAUSE AS  
3 SOON AS EVERYBODY IS IN THERE, WE START DELIBERATING AND NOBODY  
4 HAS TIME TO, BECAUSE BASICALLY WE REALLY DON'T STOP ENOUGH FOR  
5 ANYBODY TO EVEN READ THE NEWSPAPER IN THERE.

6                   THE COURT: DO YOU BELIEVE ANY INFORMATION ABOUT THE  
7 CASE FROM SOURCES OTHER THAN THE TRIAL HAVE BEEN CONSIDERED  
8 DURING THE DELIBERATION?

9                   DO YOU UNDERSTAND WHAT I MEAN BY THAT QUESTION? IT  
10 IS NOT A VERY GOOD QUESTION.

11                  MR. ESPINOZA: FROM OTHER PEOPLE?

12                  THE COURT: IS IT YOUR IMPRESSION THAT THE JURY IS  
13 BASING IT'S CONSIDERATION ON OTHER INFORMATION BESIDES THE  
14 EVIDENCE -- BESIDES THE EVIDENCE IN THE CASE?

15                  MR. ESPINOZA: NO, NO, NO.

16                  THE COURT: STRICTLY ON THE EVIDENCE?

17                  MR. ESPINOZA: NO. THAT'S ALL WE ARE CONSIDERING. I  
18 THINK WE'VE DONE A GOOD JOB OF IT MYSELF. THAT'S MY OPINION.

19                  THE COURT: I THINK YOU HAVE BEEN VERY DILIGENT.

20                  MR. ESPINOZA: I THINK WE HAVE GIVEN EVERYBODY MORE  
21 THAN FAIR CHANCE, AND THAT'S MY HONEST OPINION. I DON'T -- I  
22 WOULD HOPE SOMEBODY WOULD DO THE SAME FOR ME IF I WAS EVER IN  
23 THE SITUATION.

24                  THE COURT: WE APPRECIATE THAT. THANK YOU.

25                  MR. NICOLAYSEN: MAY WE ASK THAT SAME QUESTION,

1 THE COURT: IS IT YOUR IMPRESSION THE JURY HAS  
2 FAITHFULLY FOLLOWED THE COURT'S INSTRUCTION?

3 MR. WOOD: AS FAR AS I KNOW. NOBODY IS TELLING ME IF  
4 THEY HAVEN'T.

5 THE COURT: IS THERE ANY INFORMATION THAT HAS COME TO  
6 THE JURY FROM SOURCES OTHER THAN EVIDENCE THAT YOU BELIEVE HAS  
7 BEEN CONSIDERED IN THIS CASE?

8 MR. WOOD: NO, NOTHING. WE ARE SCRUTINIZING  
9 EVERYTHING. I'LL PUT IT THAT WAY. WE'VE REALLY TAKEN A LOT OF  
10 TIME AND PRO AND CON IT BACK AND FORTH. WE HAVE LOOKED AT  
11 EVERY PIECE A MILLION TIMES, I'D SAY, BECAUSE -- LIKE WE SAY,  
12 THIS IS --

13 THE COURT: DON'T THINK WE DON'T APPRECIATE THAT. WE  
14 KNOW YOU'RE WORKING VERY HARD UP THERE BECAUSE OF THE LENGTH OF  
15 THE DELIBERATIONS.

16 I'M GOING TO HAVE SOMETHING TO SAY TO YOU ALL ABOUT  
17 THAT EVENTUALLY, BUT THANK YOU VERY MUCH, MR. WOOD.

18 (JUROR ENTERS CHAMBERS)

19 THE COURT: MS. DOLAN, COME ON IN.

20 MS. DOLAN: HI.

21 THE COURT: COME IN AND HAVE A SEAT THERE, WON'T YOU.

22 MS. DOLAN: THANK YOU.

23 THE COURT: I JUST WANT TO ASK YOU A FEW QUESTIONS  
24 BECAUSE OF SOMETHING THAT WAS REPORTED TO THE COURT YESTERDAY  
25 THAT THERE WAS A NEWSPAPER IN THE JURY ROOM THAT CONTAINED A

1 STORY RELATING TO THIS CASE.

2 AND I'M TRYING TO FIND OUT, IF ANY -- IF YOU KNOW  
3 WHETHER ANYONE IN THE JURY ROOM HAS READ THAT STORY OR WHETHER  
4 YOU, YOURSELF, HAVE READ IT.

5 MS. DOLAN: I DON'T BELIEVE ANYONE READ IT. I KNOW I  
6 DIDN'T AND I DIDN'T SEE ANYONE READING IT, BUT --

7 THE COURT: WE'RE GOING TO MAKE SURE THERE IS NO  
8 DOUBT, BECAUSE WE ARE NOT GOING TO LET NEWSPAPERS IN THERE. I  
9 WASN'T AWARE THEY WERE GOING IN THERE. THEY SHOULD NOT HAVE  
10 BEEN. THERE SHOULDN'T HAVE BEEN ANY NEWSPAPERS, BECAUSE IT  
11 DOESN'T LOOK RIGHT.

12 IS IT YOUR IMPRESSION THAT THE JURORS HAVE LIVED UP  
13 TO THE INSTRUCTIONS THAT THE COURT HAS GIVEN NOT TO READ ABOUT  
14 THE CASE?

15 MS. DOLAN: THAT'S A DIFFICULT QUESTION. I'LL TELL  
16 YOU THE TRUTH: I BELIEVE THAT SOME PEOPLE HAVE READ DIFFERENT  
17 ARTICLES --

18 THE COURT: YOU DO?

19 MS. DOLAN: -- SINCE WE STARTED DELIBERATION.

20 THE COURT: WHAT MAKES YOU SAY THAT?

21 MS. DOLAN: THERE WAS SOME DISCUSSION IN THE JURY  
22 ROOM.

23 THE COURT: ABOUT THE ARTICLES?

24 MS. DOLAN: ON FRIDAY.

25 THE COURT: IS THIS THE ONLY TIME THERE HAS BEEN ANY

42

1 DISCUSSION? CAN YOU TELL ME THE NATURE OF THE DISCUSSION?  
2

3 MS. DOLAN: THAT MR. STOLAR HAD SAID SOME THINGS  
ABOUT THE JURY, THAT WE WERE CONFUSED.

4 THE COURT: AND THAT CAUSED SOME CONCERN TO THE  
5 JURORS?

6 SOMEBODY HAD HEARD THAT ON THE TELEVISION OR  
7 SOMETHING?

8 MS. DOLAN: I DON'T KNOW IF IT WAS TELEVISION OR THE  
9 NEWSPAPER. I DON'T RECALL HOW THEY CAME TO THAT PIECE OF  
10 INFORMATION.

11 THE COURT: WHAT RESULTED FROM THAT THEN?

12 MS. DOLAN: WE SPENT SOME TIME TALKING ABOUT IT. AND  
13 AS THE FOREPERSON, I TOOK THE LEAD AND I SAID THAT THAT IS  
14 HISTORY. LET'S GET TO WORK, IT DOESN'T MATTER WHAT ANYBODY  
15 THINKS, AND THEN WE WENT BACK TO DELIBERATION.

16 THE COURT: DO YOU THINK THE JURY'S DELIBERATION  
17 BECAME MORE SCRUPULOUS AND METICULOUS AFTER THAT BECAUSE OF  
18 THAT DISCUSSION?

19 MS. DOLAN: NO. I DON'T THINK WE COULD WORK ANY  
20 HARDER THAN WE HAD BEEN PRIOR TO THAT POINT -- OR SINCE.

21 THE COURT: LET ME ASK YOU: DO YOU THINK THAT ANY  
22 JUROR HAS BEEN INFLUENCED BY ANY INFORMATION OBTAINED FROM  
23 OUTSIDE THE COURT OTHER THAN WHAT IS OBTAINED THROUGH EVIDENCE?

24 MS. DOLAN: NO, I DON'T BELIEVE SO.

25 THE COURT: OKAY. THANK YOU. YOU'RE GOING A GOOD

1 JOB OF LEADING THE JURY AND WE APPRECIATE THE TIME AND EFFORT  
2 THAT YOU'VE ALL PUT IN UP THERE.

3 THANK YOU.

4 MS. DOLAN: THANK YOU.

5 (JUROR EXCUSED.)

6 MR. NICOLAYSEN: IF I MAY, YOUR HONOR -- AND I SAY  
7 THIS WITH GREAT RESPECT TO THE COURT -- I WOULD ASK THAT NO  
8 JUROR BE COMPLIMENTED FOR THE JOB THEY'RE DOING, ONLY BECAUSE  
9 IT MIGHT SUGGEST THAT THE GUILTY VERDICTS --

10 THE COURT: COUNSEL, I DON'T NEED THAT.

11 (JUROR ENTERS THE CHAMBERS)

12 THE COURT: MS. MC DANIELS?

13 MS. MC DANIELS: YES.

14 THE COURT: HAVE A SEAT, WON'T YOU.

15 IT WAS REPORTED TO THE COURT THIS MORNING THAT THERE  
16 WAS A NEWSPAPER IN THE JURY ROOM YESTERDAY CONTAINING A STORY  
17 THAT PERTAINED TO THIS CASE.

18 MS. MC DANIELS: YES.

19 THE COURT: AND I WANT TO FIND OUT IF YOU HAD SEEN IT  
20 YOURSELF?

21 MS. MC DANIELS: DUANE AND BOB BRING PAPERS IN EVERY  
22 MORNING AND THEY TELL ME -- IF AN ARTICLE IS THERE, I FOLD IT  
23 UP AND PUT IT IN MY PURSE. I TAKE IT HOME AND HAND IT TO MY  
24 SON AND HE CUTS IT OUT ON PUTS IT ON HIS DESK, AND AT THE END  
25 OF THE TRIAL, I TOLD HIM I WOULD GO WITH HIM AND READ THE

1 ARTICLES, SO --

2 THE COURT: YOU HAVE NOT READ ANYTHING?

3 MS. MC DANIELS: I HAVEN'T READ IT, NO.

4 THE COURT: HAVE YOU SEEN ANY ONE ELSE READ ANY  
5 ARTICLES?

6 MS. MC DANIELS: NO.

7 THE COURT: DO YOU FEEL THAT ANYONE HAS BEEN  
8 INFLUENCED BY SOMETHING THEY MAY HAVE READ OR SEEN OUTSIDE THE  
9 COURTROOM?

10 MS. MC DANIELS: NO.

11 THE COURT: DO YOU BELIEVE THAT THE JURY IS  
12 CONCENTRATING AND DECIDING THIS CASE ON THE EVIDENCE IN THE  
13 CASE AND THE LAW?

14 MS. MC DANIELS: YES, I DO.

15 THE COURT: ALL RIGHT. THANK YOU.

16 WE HAVE TWO TO GO.

17 (JUROR ENTERS CHAMBERS)

18 MS. FREDERICK: GOOD AFTERNOON, JUDGE. HOW ARE YOU?

19 THE COURT: HELLO, MS. FREDERICK. HOW ARE YOU?

20 MS. FREDERICK: JUST FINE, JUDGE. THANK YOU.

21 THE COURT: I'M JUST GOING TO KEEP YOU A MINUTE. I  
22 WANT TO ASK YOU A FEW QUESTIONS.

23 IT WAS REPORTED TO THE COURT THAT THERE WAS A  
24 NEWSPAPER IN THE JURY ROOM YESTERDAY THAT CONTAINED AN ARTICLE  
25 RELATING TO THIS CASE, AND I WANTED TO KNOW IF YOU HAD READ IT.

1 MS. FREDERICK: NO, SIR.

2 THE COURT: DO YOU KNOW OF ANYONE ELSE WHO HAD READ  
3 IT?

4 MS. FREDERICK: NO, SIR.

5 THE COURT: DO YOU BELIEVE THE JURY HAS TRIED TO  
6 AVOID READING ANYTHING ABOUT THIS CASE?

7 MS. FREDERICK: I CERTAINLY DO. I SURE DO. I KNOW I  
8 HAVE.

9 THE COURT: AND DO YOU THINK THE JURY IN ANY WAY HAS  
10 BEEN INFLUENCED BY ANYTHING ANYBODY HAS HEARD OUTSIDE THE  
11 COURTROOM, OUTSIDE OF THE EVIDENCE IN THE CASE?

12 MS. FREDERICK: NO, I REALLY DON'T. NOBODY HAS SAID  
13 ANYTHING TO ME, AT LEAST IN MY PRESENCE. I HAVE HEARD NOTHING.

14 THE COURT: THANK YOU VERY MUCH.

15 MS. FREDERICK: YOUR VERY WELCOME.

16 (JUROR ENTERS CHAMBERS)

17 THE COURT: COME IN, MRS. MC LANE.

18 MRS. MC LANE: HELLO.

19 THE COURT: HOW ARE YOU? PLEASE HAVE A SEAT THERE,  
20 WON'T YOU?

21 THIS IS IRENE MC LANE.

22 I WANT TO ASK YOU A COUPLE OF QUESTIONS,  
23 MRS. MC LANE. IT WAS REPORTED TO THE COURT YESTERDAY THAT  
24 THERE WAS A NEWSPAPER UP IN THE JURY ROOM CONTAINING AN ARTICLE  
25 RELATING TO THIS CASE, AND I WANTED TO KNOW IF YOU HAD READ IT

1 YOURSELF?

2 MRS. MC LANE: OH, NO.

3 THE COURT: DID YOU SEE ANYONE ELSE READ SUCH AN  
4 ARTICLE?

5 MRS. MC LANE: NO.

6 THE COURT: DO YOU BELIEVE THE JURORS HAVE AVOIDED  
7 READING ANYTHING ABOUT THIS CASE IN ACCORDANCE WITH THE  
8 INSTRUCTIONS OF THE COURT?

9 MRS. MC LANE: I HAVE NEVER SEEN THAT THEY HAD.  
10 THERE ARE NEWSPAPERS ON THE DESK -- ON THE TABLE, AND THEY'D  
11 SAY, "WELL, YOU CAN'T READ THIS ARTICLE."

12 THE COURT: THAT HAS BEEN OPENLY DISCUSSED?

13 MRS. MC LANE: ABSOLUTELY. "WE CANNOT READ THIS  
14 ARTICLE."

15 THE COURT: DO YOU THINK THAT THE JURY HAS BEEN  
16 INFLUENCED IN ANY WAY BY ANYTHING BROUGHT IN FROM THE OUTSIDE;  
17 THAT IS, OTHER THAN EVIDENCE IN THE CASE THAT WAS PRESENTED AT  
18 THE TRIAL?

19 MRS. MC LANE: NO, I -- NO, I HAVEN'T. I HAVEN'T  
20 SEEN ANYTHING.

21 THE COURT: ALL RIGHT. WELL, THANK YOU.

22 (JUROR EXCUSED.)

23 THE COURT: WELL, COUNSEL, YOU'VE HEARD IT.

24 MR. NICOLAYSEN: YOUR HONOR, AT THIS TIME I WOULD  
25 SIMPLY ASK THAT THERE BE CLOSER SUPERVISION, PERHAPS, IN THE

1 REMAINING STAGE OF THE DELIBERATIONS.

2 THE COURT: WHAT DO YOU MEAN BY THAT?

3 MR. NICOLAYSEN: THE BAILIFFS PERHAPS SHOULD MAKE AN  
4 EFFORT TO BE MORE OBSERVANT THAN PERHAPS THEY HAVE BEEN ALL  
5 ALONG, JUST FOR SAKE OF --

6 THE COURT: THERE ARE NOT GOING TO BE ANY NEWSPAPERS  
7 IN THAT JURY ROOM, YOU CAN BET ON THAT.

8 MR. NICOLAYSEN: THAT'S THE APPROPRIATE RULING, AND I  
9 THANK THE COURT FOR IT. I WOULD JUST ASK THAT THE BAILIFFS BE  
10 REMINDED TO REMEMBER THEIR SUPERVISORY DUTIES.

11 THE COURT: I'M GOING TO PROBABLY CONVENE THE JURY  
12 TONIGHT AND TELL THEM SO COLLECTIVELY BEFORE THEY ADJOURN.

13 ALL RIGHT.

14 MR. NICOLAYSEN: AT THIS TIME, I WOULD THANK THE  
15 COURT VERY MUCH FOR TAKING THE TIME TO CONDUCT THE INQUIRY. I  
16 THINK IT WAS PRODUCTIVE. I THINK A REPEATED ADMONITION BEFORE  
17 RECESS IS APPROPRIATE, AND LET'S JUST TRUST THAT WE HAVE DONE  
18 WHAT WE CAN TO MONITOR THE SITUATION.

19 THE COURT: THIS IS A VERY CONSCIENTIOUS JURY, IN MY  
20 VIEW, AND IT'S UNFORTUNATE THAT MR. STOLAR HAS SUCH A BIG MOUTH  
21 AND HAS SUCH A PENCHANT FOR GETTING IN FRONT OF THE T.V.  
22 CAMERA. I PUT THAT IN THE RECORD SO HE CAN READ IT.

23 HE'S THE REASON I MADE THAT ORDER, BECAUSE IN MY  
24 VIEW, HE'S NOT CONDUCTING HIMSELF RESPONSIBLY. IT APPEARS THAT  
25 THAT DISCUSSION ON THE PART OF THE JURY THAT THEY HAVE

48

1 DISCUSSED SOME OF THE CRITICAL THINGS THAT HE HAS SAID ABOUT  
2 THEM HAS APPARENTLY ENHANCED THEIR SCRUPULOUSNESS ABOUT THIS  
3 CASE AND PROBABLY WORKED TO THE BEST INTEREST OF YOUR CLIENT.

4 SO ON THE BASIS OF WHAT I'VE HEARD, I THINK THAT WE  
5 JUST SHOULD GO ON AND SEE WHAT HAPPENS.

6 MR. NICOLAYSEN: JUST SO THE RECORD IS PROPERLY  
7 PRESERVED, MAY I ASK THAT THE STACK OF PAPERS ON YOUR  
8 CONFERENCE TABLE BE MARKED AS AN EXHIBIT AND MAINTAINED.

9 THE COURT: THEY WILL BE, AND THEY'LL BE MARKED AS AN  
10 EXHIBIT -- THESE NEWSPAPERS -- AND YOU'RE FREE TO LOOK AT THEM,  
11 IF YOU WANT. THEY'LL BE MARKED AS AN EXHIBIT.

11 MR. NICOLAYSEN: AND PRESERVED IN THE RECORD.

13 THE COURT: AND PRESERVED AS PART OF THE RECORD FOR  
14 THE COURT BUT MARKED FOR IDENTIFICATION ONLY.

15 MR. MEDRANO: THANK YOU, YOUR HONOR.

16 MR. NICOLAYSEN: THANK YOU, YOUR HONOR.

17 MR. MEDRANO: MAY WE TAKE JUST A COUPLE MINUTES TO  
18 EXAMINE THESE?

19 THE COURT: DO IT OUTSIDE OR SOMEPLACE.

20 (WHICH WERE ALL THE PROCEEDINGS HAD IN THE  
21 ABOVE-ENTITLED MATTER AT THE DATE AND TIME AFORESAID.)

22 ---0---  
23 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE  
24 STENOGRAPHIC RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED  
25 MATTER.

*Julie A. Churchill*  
JULIE A. CHURCHILL, CSR NO. 6155

DATED: August 4, 1990

49

12

1 CERTIFIED STATEMENT OF COURT REPORTER

13

I CERTIFY THAT WHEN I ATTEMPTED TO USE THE TAPE TO  
TRANSCRIBE THE OFF-THE-RECORD PORTION WHERE I DESCRIBED WHAT I  
SAW IN THE JURY ROOM, I LEARNED THAT THE TAPE MACHINE DID NOT  
OPERATE FOR THE ENTIRE PROCEEDING.

14

TO THE BEST OF MY RECOLLECTION, IN SUBSTANCE, THIS IS  
WHAT I REPORTED TO THE JUDGE, COUNSEL AND LAW CLERKS PRESENT IN  
CHAMBERS.

15

"WHEN I WENT UPSTAIRS YESTERDAY TO READ BACK THE  
REQUESTED TESTIMONY OF ABEL REYNOSO, I NOTICED A  
PAPER ON THE TABLE IN FRONT OF THE JURORS.

16

IT WAS OPENED TO THE PAGE OF THE ARTICLE ABOUT  
THE CASE WHICH HAD THE ARTIST'S SKETCH AND SOMETHING  
ABOUT "CAMARENA" HEADLINED ABOVE THE SKETCH.

17

THE JUROR PUT THE PAPER DOWN AS SOON AS I  
WALKED IN THE ROOM TO READ BACK THE TESTIMONY, AND  
SHE MAY HAVE ONLY BEEN LOOKING AT THE SKETCH RATHER  
THAN READING THE ARTICLE. I COULDN'T TELL BECAUSE  
SHE ONLY HAD IT IN HER HANDS FOR A SECOND AFTER I  
ENTERED THE ROOM."

18

-000-

19

Julie A. Churchill August 4, 1990

20

JULIE A. CHURCHILL, C.S.R. DATED:

1                   DECLARATION OF WILLIAM R. PARRIS  
2

3                   I, the undersigned, William R. Parris, make this  
4 following declaration voluntarily, and of my own free will. No  
5 promises, threats or inducements of any kind have been made to me  
6 by any person or persons to make this declaration, and I make this  
7 declaration for the sole purpose of recording and documenting the  
8 facts it contains.

9  
10                  I declare that I have personal knowledge of the facts set  
11 forth below and if called as a witness I could and would testify  
12 competently thereto as follows:

13  
14                  1. I was one of the jurors who returned guilty verdicts  
15 against Juan Ramon Natta-Ballesteros Del Pozo, Ruben Zuno-Arce,  
16 Juan Jose Bernabe-Ramirez, and Javier Vasquez-Velasco, in their  
17 trial in United States District Court at Los Angeles, California  
18 that took place during May, June, July and the early part of  
19 August, 1990.

20  
21                  2. Local newspapers, including the Los Angeles Times  
22 were in the jury room daily throughout the trial and jury  
23 deliberations. Some of the jurors skimmed the headlines about the  
24 Camarena case on a daily basis in the jury room.

25  
26                  3. During deliberations and prior to rendering  
27 verdicts, other members of the jury discussed information from  
28 newspapers and other media sources, as well as other matters that

B

to the best of my knowledge were not admitted into evidence at trial:

(a) The Los Angeles Times article on our Matta verdict was read by a number of jurors and the contents of the article were discussed in detail. One juror, Myrtle Mines, reminded the others on at least two occasions that the jurors were not supposed to look at newspapers, watch TV or listen to the radio. On one of these occasions, another juror said that one of the United States Marshals had stated that the jurors could read newspaper articles after the Matta verdict. On another occasion, several jurors said words to the effect that they had the newspaper at home anyway so having newspapers in the jury room really didn't matter.

Juror John West said the government was happy about the Matta verdict. In the course of this discussion, a number of jurors talked about the fact that defense attorney Martin Stolar, the defense counsel for Matta, had reportedly described the jury's verdicts against Matta as inconsistent. Juror Joanne Frederick said that she had heard local television reporter Sylvia Lopes say their verdicts were inconsistent. I felt, along with other members of the jury, that what was being said by the news media was that the jurors were stupid. The jury spent an entire morning session discussing our being upset by these news reports and our respective negative reactions and personal opinions regarding the news reports concerning the Matta verdict.

12 (d) That there existed strained relations between  
13 the United States and Mexican governments over the Camarena case  
14 and the whole Camarena situation.

(r) That the Mexican government was seeking to extradite Agent Berrellez to stand trial in Mexico because of the abduction, and that a high-ranking representative of the United States government had said publicly that he thought this was a retaliatory act by the Mexican government for the action the United States government was taking in the Camarena case and against the defendants on which the jury was deliberating.

(g) Because of our understanding of the Mexican government's attempt to extradite and arrest Agent Berrelles, he was viewed by me, and I believe by other members of the jury, as a United States hero, and after we heard of the Mexican government's attempt to extradite and arrest him, we actually looked for Agent Berrelles in court on a daily basis to make sure he was safe. If Agent Berrelles was not present during a trial day, jurors would express concern that he might have been kidnapped. We also discussed that the Mexican government was trying to punish Agent Berrelles and that the present Mexican government was neither happy nor cooperative with the prosecution of the four defendants against whom we returned guilty verdicts.

1 after this discussion, came in and said she took a ratio of 2,200  
2 pesos to the United States dollar and worked out the conversion  
3 between pesos to dollars on her home calculator. Based on their  
4 exchange rate, she furnished us with what she said was the  
5 approximate amount the house had been sold for as \$2,000 and the  
6 amount the house had been rented for was \$10 or \$20 per month. The  
7 jury used these calculations as fact and on that basis the jury  
8 concluded the sale and rental agreements were phony.

9  
10 (j) In terms of witness David Macias, a number of  
11 jurors said he should not be believed because defendant Zuno had  
12 bought his testimony by agreeing to take care of his family.

13  
14 (k) There was discussion among the jurors to the  
15 effect that corruption in Mexico was common and defendant Zuno's  
16 political connections enabled him to "buy" the phone records that  
17 were offered in evidence as well as any other evidence introduced  
18 by Zuno's defense such that the evidence presented by Zuno's  
19 defense was for purposes of our deliberations, unreliable.

20  
21 (l) The jury also discussed that Zuno had an  
22 ownership interest in Primavera Park.

23  
24 4. I believe the conduct of the Marshals had an  
25 influence on the deliberations of the jury.

26  
27 5. Examples of what I refer to in paragraph 4 above  
28 are:

1                         (a) Two Marshals, "Nancy" and "Clay," were assigned  
2 to the jury. Throughout jury deliberations, they came into the  
3 jury room in the morning and shared with the jurors coffee and  
4 whatever food the jurors brought for the day. In addition, Clay  
5 and Nancy were in and out of the deliberation room at rest breaks  
6 getting coffee for themselves and talking with us. We frequently  
7 took breaks, and on some days we took breaks on an hourly basis.  
8 I felt very close to Nancy and Clay and I perceived that other  
9 jurors felt the same way. On some occasions when Nancy and Clay  
10 were present, the jury room contained charts and boards with  
11 verdict vote tallies and notations prepared by the jury or evidence  
12 the jury was considering. These charts and boards were in plain  
13 view during the occasions when the Marshals were in the jury  
14 deliberation room.

15  
16                         (b) One of the jurors reported to other jurors that  
17 one of the Marshals had said it was okay for the jurors to read  
18 newspaper accounts of the trial after they had returned their  
19 verdict on Matta.

20  
21                         (c) When the jury went to lunch, not only Nancy and  
22 Clay went with us, but four additional United States Marshals  
23 accompanied the jury. We all ate together and engaged in casual  
24 conversation.

25  
26                         (d) At one point, while he was with the jury, the  
27 Marshal named Clay told jury members that he shouldn't serve on a  
28 jury because he would only be able to vote one way.

1                             (e) On a daily basis, an Asian-American Marshal at  
2 the Main Street level of the courthouse asked me and some of the  
3 other jurors, I believe, as we entered the building, if the jury  
4 were going to return a verdict that day. I felt annoyed by such  
5 continual inquiries.

6  
7                             (f) Following the Zuno verdict, the Marshal named  
8 Clay said it would be better if as a jury we hurried up and  
9 returned the final verdict as against defendant Vasques-Velasco, so  
10 the Marshals could provide better security to all the defendants as  
11 certain of them had received death threats.

12  
13                             (g) The same Marshals that were protecting us were  
14 also assigned to take defendants back and forth to the courtroom.  
15 We as jurors were taken out of the courthouse via a back elevator  
16 and a route adjacent to the Marshal's lockup area. One time I  
17 observed defendant Bernabe-Ramirez in handcuffs in the hallway near  
18 the lockup. I also heard Marshals Nancy and Clay saying things  
19 like, "I have been working since 3:00 a.m. transporting defendants  
20 from the N.D.C. to the courthouse."

21  
22                             6. The jury discussed the fact that the defendants  
23 should have taken the witness stand to testify as to what they did  
24 or did not do and that each defendant had the burden to tell the  
25 jury where he was at the time of the events in question. In the  
26 jury deliberations, I believe the jury placed the burden on each  
27 defendant to present evidence and to prove his innocence, rather  
28 than placing the burden of proof upon the government.

1  
2       7. During the jury selection, and before either of us  
3       had been selected as jurors, I overheard Peggy Dolan, who was later  
4       elected the jury foreperson, state to another prospective juror  
5       that she did not understand why they would want her on this jury  
6       because she thought all of the defendants were guilty.  
7  
8  
9

10  
11       I declare under penalty of perjury that the foregoing is  
12       true and correct. Executed in the County of Los Angeles, State of  
13       California on the 15 day of August, 1990.

14

15       William R. Parria

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A4 MONDAY, MAY 7, 1990 /OC

## Camarena Case Spotlight on L.A. Unit's Tactics

**■ Drugs:** Agents have gone undercover to lure targets into the U.S.; some suspects have been snatched out of Mexico and delivered to U.S. authorities.

By PAUL LIEBERMAN  
TIMES STAFF WRITER

From the start, the investigation into the murder of Enrique (Kiki) Camarena was an emotional mission for his fellow agents in the U.S. Drug Enforcement Administration.

Camarena hadn't been shot in a drug raid—an accepted occupational hazard. He had been snatched off the streets of Guadalajara, Mexico, while headed for a lunch date with his wife. Then he was tortured for 30 hours.

"What's more, the Mexican government seemed anxious to close this matter as quickly as possible," recalled former DEA Administrator John C. Lawn. "It was, 'OK, the body has been returned to you. The case is closed.'

"It was infuriating."

Five years later, the Camarena case continues to be an open sore between the United States and its southern neighbor. The central issue now, however, is not so much who killed the agent, but the tactics used by an elite Los Angeles-based DEA unit to bring his killers to justice in the United States.

Composed mostly of Latino agents with experience in the deadly drug wars of Mexico, the unit has used virtually every tactic available to law enforcement to get its hands on key suspects.

The agents have gone undercover to lure some of their targets into the United States—and into confessions. They have paid more than \$800,000 to shadowy informants, one of whom is reputed to have killed between 35 and 50 people while working for the Mexican government.

And, in three incidents that prompted diplomatic outcries, suspects have fallen into U.S. custody after being spirited out of their home countries.

In recent weeks, Mexican officials have made a cause célèbre of the kidnaping of Dr. Humberto Alvarez Machain, a Guadalajara gynecologist who allegedly revived Camarena so his torturers could question him further. In a

plot hatched by a former Mexican policeman working as a DEA operative, the doctor was seized in his office April 2 and flown to waiting agents in El Paso.

Mexican officials, defense attorneys and some international law experts complain that, in its zeal to avenge a fellow agent's murder, the DEA's nine-member "Operation Leyenda" task force has become a lawbreaker itself, a "rogue" unit whose espionage-like methods make the United States vulnerable to like-minded retaliation.

"The fight against drug trafficking cannot be used as a pretext for violating the law nor the territory of another country," Mexican President Carlos Salinas de Gortari declared after the latest abduction.

But a DEA official said the unit has no intention of letting up.

"The mission is simple," he said. "Track down and eliminate all persons involved in the kidnap, torture and murder."

**M**any police investigations get code names. In the Camarena case, it came by mistake.

An informant reported hearing drug suspects talk about "El Leyenda," and DEA agents thought that meant "the lawman," Camarena. In fact, the suspects were talking about "the legend," another drug dealer. But the name stuck.

Assigned full time to the task force are eight agents and a civilian intelligence analyst—nearly 10% of the DEA's manpower in Los Angeles—along with a supervising agent in Washington.

Heading the unit in Los Angeles is Hector Berrellez, an agent who knew well the risks Camarena had faced.

A Vietnam veteran originally from Arizona, Berrellez was in the middle of the longest gunfight in DEA history while stationed in the

Mexican coastal city of Mazatlán.

On March 17, 1988, he and two other agents joined 15 Mexican federal police in a raid on a remote marijuana ranch.

"They were greeted by workmen with automatic rifles and pinned down for more than five hours." At one point,

Berrellez crawled from behind a car to pull a wounded federal officer to safety.

"They had 20,000 rounds shot at them before Mexican soldiers came to the rescue," recalled another agent.

Berrellez was given the U.S.

Attorney General's Award for Ex-

ceptional Heroism.

"Most of the [Leyenda] agents have worked in Mexico and they know the ground rules down there," said the colleague. "When they walk down the corridor, you can see these are focused people. You would not want to mess with them."

But law enforcement clearing-

house warned last week that one group may be very willing to mess with them. According to a memo prepared by the El Paso Intelligence Center, which shares data on

drug-smuggling among 10 federal

agencies. Please see DEA, A24

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A24 MONDAY, MAY 7, 1990 /OC

LOS ANGELES TIMES

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## DEA: Tactics Questioned

**Continued from A4**  
 agencies, a "hit squad" of 20 people may be en route from Guadalajara to seek revenge for the abduction of the doctor. The vigilantes were believed to be holed up at a ranch in the Mexican border city of Mexicali, armed with AK-47s and preparing to "take the war to L.A." the memo said.

Cornelius Dougherty, a DEA spokesman in Washington, said precautionary measures were being taken but emphasized that the memo contained only "raw intelligence."

□  
**D**EA agents come into the job knowing it is one of riskiest in law enforcement.

The 3,000 agents, stationed throughout the United States and 44 other countries, are involved in two shootings a week on average.

"We've had a number of agents killed throughout the world, but most of the times it hasn't been so sinister," Ralph B. Lochridge, a DEA spokesman in Los Angeles, once explained.

Camarena's torturers had tape recorded his February, 1985, interrogation and copies were recovered from a drug trafficker's home in Mexico.

"They tortured him, slowly, slowly, slowly," said Antonio Garate Bustamante, the DEA operative who claimed credit for the Guadalajara doctor's recent abduction. "They asked him questions that they didn't even want the answer to."

Unlike most murder cases, where there may be one or two suspects, the DEA suspected the list of conspirators against Camarena was long—possibly extending to associates of Mexico's then-President Miguel de la Madrid.

A federal grand jury was convened in Los Angeles in 1986 to consider U.S. charges in Camarena's murder. But there was a major stumbling block. Virtually all of the suspects were Mexicans. And, despite a 1978 extradition treaty with the United States, Mexico traditionally has refused to turn over its own citizens, insisting that any criminal proceedings be brought at home. Getting suspects to trial would not be routine.

□

The first indictment was still two years off when Rene Martin Verdugo Uriquidez was delivered into U.S. custody. Verdugo was driving in the resort of San Felipe on Jan. 24, 1986, when a car skidded into his path. Six men, four of them State Judicial Police officers, descended on him.

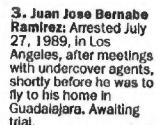
### CAMARENA CASE SUSPECTS IN U.S. CUSTODY



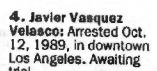
**1. Jesus Felix Gutierrez:** Tracked through several couloirs then arrested by a surveillance team Christmas Eve, 1986, in El Monte. Sentenced to 10 years in prison.



**2. Raul Lopez Alvarez:** Arrested Oct. 26, 1987, at a Montebello restaurant after meeting with undercover DEA agents posing as drug dealers. Sentenced to life plus 240 years in prison.



**3. Juan Jose Bernabe Ramirez:** Arrested July 27, 1989, in Los Angeles, after meetings with undercover agents; shortly before he was to fly to his home in Guadalajara. Awaiting trial.



**4. Javier Vasquez Velasco:** Arrested Oct. 12, 1989, in downtown Los Angeles. Awaiting trial.

### WHERE THEY WERE SEIZED



**5. Dr. Humberto Alvarez Machain:** Kidnapped April 2, from his Guadalajara office, then flown to waiting DEA agents in El Paso, Tex. Awaiting trial.



**6. Ruben Zuno Arce:** Brother-in-law of former Mexican President Luis Echeverria, arrested Aug. 9, 1989, at San Antonio, Tex. supermarket. Awaiting trial.



**7. Rene Martin Verdugo Uriquidez:** Abducted Jan. 24, 1986, in San Felipe, Mexico, then pushed through the border fence into the U.S. near Calexico. Sentenced to life plus 240 years in prison.



**8. Juan Ramon Metta Ballesteros:** Forced April 5, 1988, onto an airliner in Honduras and taken to the Dominican Republic, where authorities spirited him aboard a jet to Puerto Rico. Arrested over U.S. air space. Awaiting trial.

According to court documents, Verdugo was "handcuffed, blindfolded and placed in the back seat of an automobile," then driven to the U.S. border and pushed through a hole in the fence.

A spokesman for the U.S. Marshal's Service said its agents "just happened" to be waiting on the other side of the fence.

A top lieutenant to Mexican drug lord Rafael Caro Quintero, Verdugo was held on marijuana smuggling charges. More importantly, perhaps, authorities also were convinced he had been in the Guadalajara house where Camarena died.

Calling it an "illegal kidnapping," Mexican prosecutors indicted the six Mexicans who seized Verdugo. But they had disappeared.

Court records show the men were paid a total of \$32,000 so they could move to the United States under special visas.

"They said they were paid 'expenses' because they had to leave the country," complained Verdugo's San Diego attorney, Michael Pancer. "Our information was they were paid to do the kidnapping. . . . If a drug lord paid them to break the law, we call it a bribe."

But even if Pancer proved the DEA conspired in the abduction, that would not have been grounds to free Verdugo.

U.S. Supreme Court rulings going back a century have held that it does not matter how international fugitives wind up in American courts as long as the apprehension does not involve torture that "shocks the conscience."

For reasons of diplomacy, however, U.S. agents are not supposed to act unilaterally on foreign turf. The only exception was outlined in a controversial Justice Department memo last June 21, which said the

President could order the seizure of terrorists without a host government's consent.

"If U.S. citizens are going to take actions in another country, [that country's] officials should know in advance and give their concurrence," said former DEA Administrator Lawn. "We are there as a guest."

Lawn noted, however, that the Camarena abductions were not carried out by DEA agents, but by "law enforcement counterparts" in other countries who offered their

Please see DEA, A25

LOS ANGELES TIMES

## DEA: Tactics of L.A. Unit Criticized

**Continued from A24**  
help—apparently without alerting higher-ups.

"As a result of that type of cooperation, the politicians within that country may become angered," he said. "We have to sit back and let the rhetorical furor settle and continue to do our business . . ."

The first indictment was unsealed on Jan. 6, 1988. Of nine defendants, three were in U.S. custody—Verdugo and two others nabbed by Operation Leyenda.

The unit traced Jesus Felix Gutierrez, who was suspected of sheltering Caro Quintero at a ranch in Costa Rica after the Camarena killing, through Chile, Argentina, Brazil and Colombia. The agents finally caught him on Christmas Eve, 1986, emerging from a house near Los Angeles—apparently trying to visit family in the area.

Falling next into DEA hands was Raul Lopez Alvarez, a former Mexican policeman whose boasts of helping torture Camarena were videotaped—after he came to California to meet a member of the unit posing as someone who wanted a U.S. Customs agent killed for \$10,000.

"They lured him here," Lopez's attorney complained after he was arrested Oct. 26, 1987, at a Montebello restaurant.

Assistant U.S. Atty. Roel Campos called it "one heck of a job" by the agents.

Six months later, the capture of another suspect set off riots.

One of the most notorious drug traffickers in the world, Juan Ramon Matta Ballosteros had gained sanctuary in his native Honduras, whose constitution prohibits extradition of citizens. But to prod action, U.S. authorities reportedly threatened to name Honduran military officers tied to the drug trade.

On April 5, 1988, local police raided Matta's home and hustled him on a plane to the Dominican Republic—without a passport. Dominican authorities ordered him expelled for entering their country illegally and forced him aboard an airliner to Puerto Rico. When that plane entered U.S. airspace, federal marshals were waiting on board to arrest him.

More than 2,000 protesters stormed the U.S. Consulate in Honduras, chanting "Matta yes! Gringos no!" Five people died in clashes with troops.

□  
**T**he Salinas administration took power in Mexico in December, 1988, offering hope of greater co-

operation in fighting drug trafficking. There was a surge of Mexican prosecutions for Camarena's killing, particularly for Caro Quintero and his men.

Nevertheless, U.S. officials still saw no prospects of winning extradition of other influential suspects in Mexico.

Three alleged conspirators were snared by Operation Leyenda during 1989, but all either lived in the United States or came across the border voluntarily. One of them, Ruben Zuno Arce, the 59-year-old brother-in-law of former Mexican President Luis Echeverria, was detained as a "material witness" after he flew from Mexico to San Antonio on a business trip.

Then, with the arrival of 1990, relations between the United States and Mexico deteriorated.

In January, Mexican officials were infuriated by "Drug Wars," a NBC television mini-series on the Camarena case that portrayed their government as corrupt.

That same month, a new indictment was issued in Los Angeles, bringing to 19 the number of defendants. The new ones included the former chief of the Mexican federal police.

In March, the Bush Administration announced that data from U.S. spy satellites showed the Mexican marijuana crop was 10 times larger than previously thought. Mexican officials called the contention inaccurate and irresponsible.

It was amid such tension that Dr. Humberto Alvarez Machain received unwelcome visitors at his office April 2.

At first, a DEA spokesman in Washington denied reports that there was a \$100,000 reward for Alvarez. But Assistant U.S. Atty. Manuel Medrano, the lead Camarena case prosecutor, later admitted such bounties were common knowledge where it counted.

"The U.S. has had standing offers in Mexico . . . that's been on the streets in Guadalajara for some time," he said.

Garate, a former Mexican policeman, said he arranged the abduction over the phone from Los Angeles, getting 10 men in his home country, including "a few honest cops," to seize the doctor and deliver him to El Paso—where Berrelleza and two other agents arrested him.

Since then, the barrage of condemnation from Mexico has not ceased, with one official terming the incident a "sort of invasion" by the United States.

Last Thursday, President Bush pledged to "eliminate the misunderstanding," but Mexican officials continued on the attack. Already demanding the arrest of Garate, they now proposed that 41 Mexican drug police be stationed in the United States—matching the number of DEA agents in Mexico.

Experts in international law say the reaction illustrates the diplomatic risks of tactics such as the abduction.

"I'm worried about reciprocal action on the part of countries like Mexico, Colombia and various terrorist states like Iran, Libya, Syria," said Abraham Abramovsky, director of the International Criminal Law Center at Fordham University. "I would hate to see a situation where they abduct one of our nationals and say . . . 'Look what you did!'"

But Robert Friedlander, an attorney for the Senate Foreign Relations Committee, said such bold actions may be necessary as a "last resort."

"It's sending a message to the other bad guys . . . that the long arm of American justice is going to reach you," Friedlander said.

"These guys not only put agents at risk, they murder and torture at them . . . Until or unless we have a greater success on the terrorism front, and the narcotics front, the business of grabbing people from time to time is going to continue."

Garate, who has worked closely with Operation Leyenda, would not rule out further abductions in the Camarena case.

Sitting in his apartment, semiautomatic weapon at the ready and two phones ringing with calls from contacts back in Mexico, Garate said officials in his home country cannot understand the DEA's obsession with one agent's death.

"The Mexican attorney general said that 42 [Mexican] agents were killed in the line of duty. . . . You lost an agent and we lost 42."

"They'll show the families of the dead [Mexican] agents, who say, 'We're proud,'" Garate continued, shaking his head. "But I would like to know how many people who killed them have been arrested."

Garate said the Operation Leyenda task force is investigating a second physician who may have helped in the torture of Camarena.

"He hasn't been indicted yet. I hope he will. Then I will look for him."

**Times staff writers Henry Weinstein in Los Angeles and Patrick McDonnell in San Diego contributed to this story.**

1 PERHAPS REWORDED, TO EACH OF THE REMAINING JURORS?

2 (JUROR ENTERS CHAMBERS)

3 THE COURT: COME IN, SIR. MR. WOOD?

4 MR. WOOD: RIGHT. HAVE A SEAT, WON'T YOU, MR. WOOD?

5 WE ARE NOT GOING TO KEEP YOU LONG.

6 IT WAS REPORTED TO THE COURT YESTERDAY THAT THERE WAS  
7 A NEWSPAPER IN THE JURY ROOM CONTAINING AN ARTICLE RELATING TO  
8 THIS CASE.

9 MR. WOOD: THERE HAS BEEN A NEWSPAPER IN THERE EVERY  
10 DAY, YOUR HONOR. I READ THE NEWSPAPER. I READ THE BUSINESS  
11 SECTION AND THE "VIEW" EVERY MORNING. I BUY A PAPER BECAUSE  
12 I'VE GOT A LOT OF STOCKS, AND THE ONLY WAY I CAN KEEP UP ON  
13 THEM IS WHAT IS GOING ON IN THE NEWSPAPER.

14 I HAVE READ, YOU KNOW, THE PAPER, BUT THAT'S JUST  
15 THE TWO SECTIONS I READ OUT OF IT EVERY DAY IS THE BUSINESS  
16 SECTION AND "VIEW" SECTION.

17 THE COURT: YOU PERSONALLY HAVE NOT READ ANYTHING  
18 ABOUT THIS CASE?

19 MR. WOOD: NO, NOT ON THE CAMARENA CASE.

20 THE COURT: ARE YOU AWARE OF ANYONE ELSE HAVING DONE  
21 SO?

22 MR. WOOD: NOT THAT I KNOW OF. IF I SEE IT, I JUST  
23 GO ON TO THE NEXT PAGE. IF YOU'RE LOOKING AT THE NEWSPAPER --  
24 THERE IS ALWAYS SOMETHING IN THE NEWSPAPER -- YOU -- WHAT DID  
25 YOU TELL US? IF YOU SEE IT, JUST PASS IT. THAT'S WHAT I DID.

LOS ANGELES TIMES

A30 SUNDAY, MAY 27, 1990 • \*

## Mexico Reportedly to Seek Extradition of DEA Official

From Associated Press

MEXICO CITY—Mexico will seek the arrest and extradition of a Drug Enforcement Administration official for his role in the abduction of a Mexican physician facing trial in the death of a U.S. drug agent, according to news reports.

Mexico City newspapers reported Saturday that the attorney general's office will seek the extradition of DEA supervisor Hector Barrales, for alleged involvement in the kidnapping of Dr. Humberto Alvarez Machain. The physician faces trial for alleged participation in the 1985 slaying of DEA agent Enrique Camarena.

Barrales testified Friday at a federal hearing in Los Angeles that up to \$60,000 was authorized for the capture of Alvarez. He said that DEA Deputy Director Pete Graden knew of the plan.

The seizure of the doctor from his office has caused tension between the U.S. and Mexican governments. Mexico has demanded his return, saying his delivery to the United States violated Mexican sovereignty.

Alvarez, a Guadalajara gynecologist, was arrested April 3 after being taken to El Paso to face charges that he administered drugs to Camarena during the kidnapping, torture and murder of the drug agent and his pilot.

DEA spokesman Frank Shultz in Washington denied that the government offered a reward for the people who captured Alvarez, saying the \$20,000 payment was for "services." He said it could have covered such things as rental of the plane that flew Alvarez to El Paso.

Former Mexican police officer Antonio Garate Bustamante, who is wanted by the Mexican government, testified he paid \$20,000 in DEA money to the people who captured Alvarez, and was continuing to pay their expenses.

Garate said he arranged for the doctor to be brought across the border with the approval of DEA officials. He said he found friends who would do the job without advance payment.

"I told them that no money would be provided up front, and they would have no assistance from the DEA," he said. "Whatever they were doing they were doing on their own."

The attorney general's office said Friday that it would present formal accusations against Barrales and Garate in a Mexico City district court, according to news reports. After obtaining warrants, it will present the accusations to the Foreign Ministry to seek the official's extradition, the newspaper said.

Mexican officials call Garate the "connection" between DEA officials and the Mexicans who abducted Alvarez, the news reports said.

On April 28, the attorney general's office announced the arrest of six people for alleged involvement in Alvarez's capture.

Prosecutor Carlos Salinas de Gortari said Friday that the abduction "does not help in the fight against drug smuggling."

Speaking in the northern state of Chihuahua, Salinas said that the U.S. and Mexican governments should conduct themselves with mutual respect.

Testimony at the trial of three

other men in 1988 showed that Camarena was tortured and interrogated by drug lords. Prosecutors maintain Alvarez gave Camarena drugs to revive him for additional torture before his slaying.

The drug lords reportedly were angered because Camarena's undercover work had led U.S. and Mexican authorities to a desert marijuana plantation, where they seized 10,000 tons of the drug worth billions of dollars.

E

CASE NO.	CR87-424 (P)EM	
VS.	USA	
DEFENDANT'S EXHIBIT		EX-4
DATE	7-5-90	
DATE		
BY		Deputy Clerk
AD 388A		(1)

III

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283 91  
FORM E8-2A

*Denied*



A.T. 257, B5.  
LXXXVII.

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lamenta sin poder precisar el número total en virtud de que  
éste se dio a tratar a la recámara de su patrón ERNESTO -  
FONSECA y solamente los vio de noche cuando subió hacer el  
aboo de la habitación, asimismo pudo darse cuenta de que  
varios compañeros sujetos portaban armas sin poder precisar  
su calibre ya que los traían fajadas en la cintura y de  
entre los que escuchó que portaban estas armas, no puede men-  
cionar el nombre de todos ellos, ya que como lo manifestó  
con anterioridad sólo recordó además de su patrón ERNESTO  
FONSECA a tres personas más de los cuales ya mencionó sus  
nombres, de estos personajes se dio cuenta qué portaban armas  
de férrea permanentemente RAIMONDO VILLEZ, JORGE GODOY; qué el motivo  
por el cual el cliente se encontraba en la casa de Puerto  
Vallarta Jalisco propiedad de su patrón, se dobló a que él  
presta sus servicios como robo en diferentes casas, propie-  
dad de su patron señor ERNESTO FONSECA y que concretamente  
pudo mencionar tres de éstas residencias, a los cuales se  
asistieron oficiadas y que se encuentran ubicadas en la  
Ciudad de Guadalajara Jalisco en los siguientes domicilios:  
que en primera se ubica en el centro ubicada en el Fraccionamiento  
Bucket, Club antes conocido como Club Líbanes; la segunda  
se encuentra ubicada en la calle de Antecas sin número  
el nombre, pero para una mayor identificación se encuen-  
tra en el centro de la Ciudad MARGARITA; la tercera de  
ellas se ubica en la misma calle de Antecas a dos cuadras de  
la esquina de policía de colonia San. Javier, que un fraccio-  
namiento Residencial como se dijo anteriormente, se llama  
Colinas de San. Javier; que el día veo llegó a la Ciudad de  
Puerto Vallarta Jalisco, el día cuatro de abril aproximadamente  
a las diez de la mañana junto con los otros 22 ó 23 compañeros  
que lo acompañaron por la noche, por el declarante ese mismo dia  
aproximadamente a las cuatro de la mañana; que los compañeros  
de él, mismos que trabajan para ERNESTO FONSECA pasaron por el  
de la veo y le recomendaron que de la casa que tenía a su  
cargo una vigilancia y que en la que se encuentra ubicada en la  
calle de Antecas, en la esquina de la esquina de vigilancia; que  
la entidad en el que la recorrida era conducida por RAIMONDO  
VILLEZ; que esa vez, que se encontró dentro de la ca-  
nya, RAIMONDO VILLEZ le comentó que lo necesitaba su patrón esto-  
refiriendo a Puerto Vallarta, que es trabajo. De su caso se trasladaron

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72 - DE LA A.Y. 2567/85.  
DECLARACION DE JUAN JOSE HERNANDEZ RIVERA

PROCL. - de la calle Vallarta, en donde se dio cuenta de que en esta misma gasolinera se encontraba su patrón el señor ENERSTO FONSECA, en un carro Gris Marqués de color obscuro acompañado de otras personas de los cuales no pudo reconocer a ninguno ya que como lo ha manifestado únicamente conoció a tres de ellos, así mismo en la mencionada gasolinera se encontraba otras dos camionetas una de las cuales era de la marca Ford Cuerillo y otra Ford Carril-Alt, y se percató de que en el interior de las mismas se encontraban alrededor de ocho gentes aproximadamente y que no pudo darse cuenta quién era el conductor dado que esta se encontraba un poco alejada de donde él estaba, sin embargo pudo darse cuenta que en la camioneta en la cual se iba a recoger al de la vez iban en la parte posterior de ambos un alto poder de los conocidos como "camioneros" de la mafia que le dió RAMON REYES MELLADO como motivo del viaje de que se iban a pasajeros más de veinte en la noche a Puerto Vallarta, pero que el de la vez desde principio y por razones que resultan hasta ahora incierta carecía de por el motivo del viaje era para que se pudiera ocultar de la persecución policiaca su patrón ENERSTO FONSECA y que al final se le concedió lo de que tuvieron las personas que acompañaban a su patrón incluyéndose el de la vez iban para proteger la vida y la seguridad de su patrón ENERSTO FONSECA. - - - - - Qué el motivo por el cual sabe que hubo una persecución policiaca de diferentes Corporaciones, se debía a que su patrón ENERSTO FONSECA se dedicó al cultivo sientrú, compra venta y tráfico de estupefacientes, además de que por pláticas que tuvieron entre sus compradores de otro nivel se pudo dar cuenta de que su patrón entraña crimen y había participado en alguna forma en el secuestro y muerte del Agente del D.E.A. CHARLES y del poliota Mexicano de apellido ZAVALA, continuando el de la vez que le anterior lo consta en virtud de que el día diez de marzo del presente año llegó al domicilio

3451

que se encontraba viviendo el de la vez el señor ERNESTO FONSECA y el señor LIEVE que dicho domicilio se encuentra en la calle de Aztecas a dos cuadras de la caseta de vigilancia. En el mencionado domicilio y mientras su patron el señor ERNESTO FONSECA subia a sus habitaciones el señor de apellido Lepo le pregunto al de la voz que era lo que estaba leyendo, manifestandole que esta ba leyendo el Informador de la Ciudad de Guadalajara, el asunto relativo a la muerte y desaparición aclara a la desaparición del agente del DIA, CLEMENTE, comentandole el señor LIEVE que toda gran pura jalada, ya que él es el que lo había secuestrado junto con otros complotos. Habiéndole puesto a disposición de RAPHAEL CARO QUINTERO, y habiéndole entregado a ésta persona personalmente. Asimismo le cuenta al de la voz que su patron ERNESTO FONSECA se nície a las drogas, ya que los cigarrillos que fumaba éste eran de forma muy especial, ya que la punta se encendía enroscada y antes de fumarselos los rasaba por encima de la llama del encendedor teniendo estos cigarrillos el color café aproximadamente a la mitad de su tamaño. Que en relación a las personas que visitaban a su patron ERNESTO FONSECA, era en su gran mayoría gente del rumbo de Sinaloa ya que el agente que tocaba al hablar de su propio destino en esta Región, asimismo el de la voz pudo darse cuenta de que en unas tres ocasiones RAPHAEL CARO QUINTERO visito a su patron ignorando cual o cuales eran los asuntos tratados, que el lugar donde se encontraron tanto su patron como RAPHAEL CARO QUINTERO fué la casa ubicada en la calle de Aztecas, atras de los Suites MURIELLA, qué los vehículos que utilizaron para trasladarse a Puerto Vallarta tren son propiedad de su patron y uno de ellos al que identifica como la camioneta Camion-olt de color café perteneció a una de las personas que fueron detenidas juntas con el diceante y que vieno de la Ciudad de Mexicali, Baja California. Que en este acto el de la voz desea manifestar que teniendo a la vista la declaración vertida ante la Policía Judicial Federal, con fecha nueve de abril del año en curso, y habiéndosele dado lectura a la misma la ratifica, en todas y cada una de sus partes por contener la verdad de los hechos y reconoce como suya la firma que aparece al calce y al margen.

3452

AV. PREVIA N°. 2567/85.

PROCURADOR JUAN BERKALDE GUTIÉRREZ. LIC. BENITO SANTILLÁN.

T. DE A.

~~MARIO ERASMO PEREZ LOPEZ.~~

T. DE  
ELODIA CRUZ ORTEZCO.

**REPUBLICA**

3453

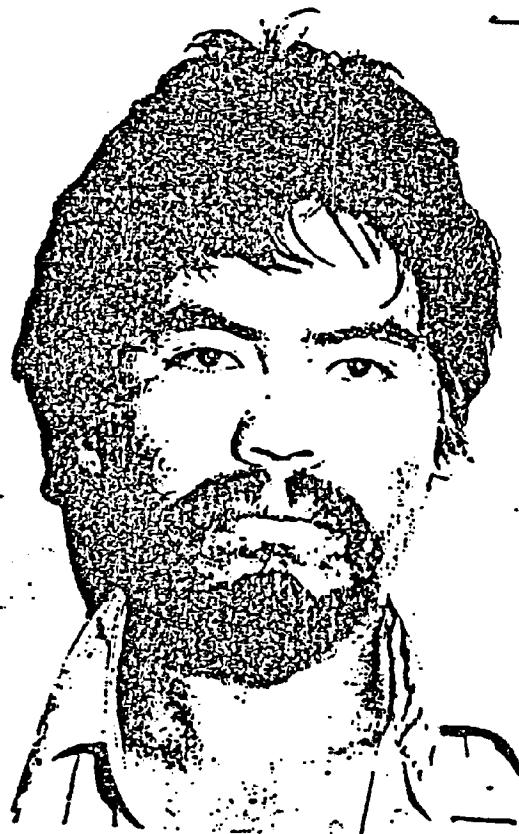


PROCURADURIA GENERAL  
DE LA  
REPÚBLICA

A.P. 2507/R5

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PROV.



P.R.C.

— Juan ... (Signature)

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54286. Cytoskeleton

- 2 -

**PROBLEMS RELATED TO THE  
POLYMER INDUSTRY**

WILSON COUNTY, TENNESSEE  
ESTATE PLATES 144

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~~RECEIVED DIRECTORATE~~

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CASE NO.	CR 87-422(P) or	
VS.	USA	
DEFENDANT'S EXHIBIT	5467-A	
DATE	7-5-90	IDEN.
DATE	EVID.	
BY	Deputy Clerk (Bernard)	
AO 386A	(5)	



United States  
District Court  
Central District of California  
OFFICE OF THE CLERK

Leonard A. Brosnan  
Clerk

IIII-7

COURT INTERPRETER SERVICES

DECLARATION OF INTERPRETER

I, the undersigned, say: I am a Spanish/English and English/Spanish Official Court Interpreter certified by the Administrative Office of the United States Courts and I have translated the attached document(s) from Spanish into English. I declare, under penalty of perjury, that to the best of my abilities and belief, this is a true and correct translation of the Spanish language text.

SPECIFIC DESCRIPTION OF DOCUMENT(S)

Preliminary Proceedings  
File No. 2567/85

Executed this 24th day of June, 1990, at Los Angeles, California.

Corinne I. Edelson

Name of Interpreter (PRINT)

Corinne I. Edelson

Signature of Interpreter

Re:

Case No.:

Ordered by:

No. of pgs.:

U.S. COURTHOUSE, RM. G-8 • LOS ANGELES, CALIFORNIA 90012

Government  
Official  
Seal

Attorney General's  
Office  
Of the  
Republic

Preliminary Proceedings  
File No. 2567/85

- - - In the City of Mexico, Federal District, at 9:30 hours of the 20th day of April 1985, before the undersigned Deputy Attorney General of the Federal Public Ministry, assigned to this case for this proceedings, the attendant witnesses are present and will sign this document upon the conclusion of this preliminary proceedings, at the bottom of the prosecution's witness' statement, as part of the record. Citizen Juan Bernabe Ramirez, who has been exhorted to tell the truth in the matter now pending before the court, and having been advised of the penalties that are incurred by anyone who gives false statements under affirmation to tell the truth, he states: That he is 26 years of age, married, from the City of Guadalajara, Jalisco, his address is: Calle Josefa Ortiz de Dominguez No. 1969, Sector Libertad, in Guadalajara, and following his affirmation to tell the truth regarding the facts of this matter, he states:

ON THE RECORD-----

At this time the Deputy for the Federal Public Ministry, advises the witness of his right to designate an attorney of his choice, or a person he trusts to represent him, as provided in Article 128 of the Penal Code of Federal Procedures. At this particular time the witness reserves his right to designate an attorney before the presiding judge, and as to the facts, he states:

That he is cognizant of the reason for his detention, he further indicates that he was detained in the City of Puerto Vallarta, Jalisco, on the 8th day of April 1985, at approximately 2400 hours along with 23 to 24 other

individuals who worked in the house which is the property of Mr. ERNESTO FONSECA, which is located in front of the Bugambilias Sheraton,- among the others who were also detained with him, the witness remembers and identifies a RAMIRO PEREZ ARELLANO, whom he knows as an escort or bodyguard for Mr. FONSECA, he likewise identifies a JORGE GODOY, who also held a position as an escort, chauffeur, or bodyguard with ERNESTO FONSECA; he also identifies a GUADALUPE TORRES, who had recently been fired from the State Judicial Police Force of Jalisco, and who was probably hired as a bodyguard too. That he noticed prior to his detention, that the house which was the property of his boss, was full of "long weapons", meaning high caliber weapons, the kind that is reserved for the army, navy and air force, he was unable to give a precise figure in this regard, due to the fact that these were kept in his employer ERNESTO FONSECA'S bedroom, and he only had occasion to see them when he went upstairs to clean the room; he also noticed that several of his co-workers carried weapons but was unable to determine the caliber, because they carried their weapon in its holster at their waist, he is unable to recall all of their names, since as he stated before, he only knows his boss, ERNESTO FONSECA, and about three others whom he already named. The individuals he noticed were carrying weapons constantly, were RAMIRO PEREZ AND JORGE GODOY, Further, that the witness was in that house because he performs the cleaning duties of several houses that belong to his boss, ERNESTO FONSECA, that he can mention three of those houses, which his boss called offices, and which are located in the City of

Guanajuato, at the following addresses: The first one is located in the Providencia Racket Club, formerly known as the "Club Libanes"; the second one is on Calle Azteca, the witness is unable to recall the number, however; for better identification, this house is located exactly behind the Margarita Suites; the third house is located on the same street, two blocks away from the police booth, in Colonias Don Javier, which is a residential area known as Colinas de San Javier; That he had arrived to Puerto Vallarta on the 4th day of April, approximately at 10:00 a.m. together with the other 23 or 24 co-workers who worked for ERNESTO FONSECA, who had picked him up at around 4:00 a.m., that said co-workers picked him up at one of the houses in which he worked as a night watchman, the house located on Calle Aztecas; two blocks from the police booth,- That the station wagon that picked him up was driven by RAMIRO PEREZ ARELLANO and that once he was inside the station wagon, RAMIRO PEREZ, told him that the boss, referring to FONSECA wanted him for a job. From that house they proceeded to a gas station on Calle Vallarta, Where he saw that his boss, ERNESTO FONSECA, was there in a GRAND MARQUIS, dark in color, accompanied by other persons whom he does not know; at that same gas station, two other station wagons were parked, a Ford Station wagon and a Ford carry-all. He then saw that inside the station wagon, there were approximately five people and that the person who was driving, the witness is unable to recall the name, appeared to be a member of law enforcement; in the Ford carry-all saw approximately eight people but he could not tell who was driving because they were some distance away from him; he also noticed that inside the station wagon he was picked up in, high

pol weapons were being carried the kind that is called banana type magazine clip guns: That the reason RAMIRO PEREZ ARELLANO, gave him for this trip, was that they were going to spend a few days vacation in Puerto Vallarta, but that he, from the begining and for obvious reasons, was certain that the real reason for the trip was so that ERNESTO FONSECA, could hide from the police, and that he was also conscious of the fact that all persons accompanying his boss, himself included, were taken along to protect the life and safety of his boss, ERNESTO FONSECA.

That the reason he knew the police of various law enforcement agencies were after his boss, was in effect due to the fact that ERNESTO FONSECA, was involved in the harvesting, planting, buying, selling and trafficking of drugs, aside from the fact that thru conversations held by his co-workers, whom he overheard, he could make out that was involved and had participated in some way in the kidnapping and death of an agent of DEA - CAMARENA- and of a Mexican pilot named ZAVALA. He goes on to say that he states all of the above based on what transpired on the 20th day of March 1985, FONSECA and Mr.LEPE, came to the house he watched, located on Calle Aztecas, and that while going up the stairs to his bedroom Mr. LEPE. asked him what he was reading,- the witness replied that he was reading the newspaper "El informador de Guadalajara", about the death and disappearance of the DEA agent CAMARENA, Mr. LEPE, then told the witness that all of it was nothing but sheer lies, that he had been the one who had kidnapped CAMARENA, aided by others and that he had placed CAMARENA, at the disposal of RAFAEL CARO QUINTERO,-That he personally turned him over to him. He also states that he is

aware that his boss, ERNESTO FONSECA, is addicted to drugs. That the cigarettes he smoked were of a very special kind, that the cigarettes were all curled at the tip and before smoking them, he would hold them up to a lighter and heat them.- the cigarettes were a brown color and are half the size of the regular cigarettes.

That with regard to the people who visited his boss, ERNESTO FONSECA, the majority were people from the Sinaloa area, he could tell because of their accent which is distinctly from that area; also, that on three occasions RAFAEL CARO QUINTERO, visited his boss, but that he is unaware of what or which matters were discussed; that the place where his boss and CARO QUINTERO, would meet at, was the house located on Calle Aztecas, behind the Margarita Suites.- That the vehicles utilized to travel to Puerto VALLARTA, three of which are the property of his boss; that one of the station wagons, the brown carry-all, belonged to one of the individuals who was arrested along with the rest of them, but that this person came from Mexicali, Baja California.

That at this moment, he states: That He has in front of him the statement given by him to the Federal Judicial Police Department on the 9th day of April 1985, and that after having its contents been read, he ratifies each of its parts and in its entirety as being true and correct and recognizes the signature as being his own, as it appears in the margin and at the bottom of his statement in this document, indicating that this is the signature he uses in all his public and private matters, and that this is all he has to state.

Government  
Official  
Seal

Preliminary Proceedings  
File No. 2567/85

Attorney General's  
Office  
of the  
Republic

After having the contents of this statement been  
read, he ratifies same by placing his signature in the  
margin of and at the bottom of this document on record.---

We hereby certify-----  
THE DEPONENT

JUAN BERNABE RAMIREZ

DEPUTY ATTORNEY GENERAL  
FED. PUB. MINISTRY  
ERNESTO SANTILLANAS, ESQ.

Rubric

ATTENDANT WITNESS

MARIO ERASMO PEREZ LOPEZ

Rubric

Rubric

ATTENDANT WITNESS

ELODIA CRUZ OROZCO

Rubric

BRIDGMAN, MORDKIN, GOULD, AND SHAPIRO, INC.  
17050 BUSHARD STREET, SUITE 200, FOUNTAIN VALLEY, CA 92708  
(714) 963-5486 FAX (714) 964-1328

1                   POINTS AND AUTHORITIES

2                   JURY MISCONDUCT

3                   Federal Rules of Criminal Procedure, Rule 33, provides in  
4 pertinent part:

5                   "The court on motion of a defendant may  
6 grant a new trial to him if required in  
7 the interest of justice. . . . And a  
8 motion for a new trial based on the  
9 ground of newly discovered evidence may  
10 be made only before or within two years  
11 after final judgment, . . . ."

12  
13                  Newly discovered evidence which will support a motion for  
14 new trial need not go to the merits of the case. Motions founded  
15 upon after discovered evidence affecting the integrity of the  
16 jury's verdict has been treated as based upon newly discovered  
17 evidence within the meaning of the rule. Holmes v. United States,  
18 284 F2d 716, 720 (4th Cir. 1966), Rubenstein v. United States 222  
19 F2d 638 (10th Cir.)

20  
21                  When it appears that a jury has received extra judicial  
22 information a presumption of prejudice is created, the Government  
23 then has the burden of rebutting said presumption. The  
24 presumption of prejudice can be rebutted only by a showing that  
25 the information the jury received was harmless. The Government  
26 has a heavy burden in establishing that no prejudice resulted  
27 from the jury's receipt of extrinsic material. United States v.  
28 Littlefield, 752 F2d 1429 (9th Cir. 1985).

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With the respect to the procedure employed a District Court must make findings of fact at two separate levels. First, the District Court must find the basic, or subsidiary, facts. For example the nature, content, and extent of the extra judicial contact. Based on its findings of subsidiary facts, the District Court must then make the ultimate factual determination, that is whether the contact likely influenced jury impartiality. United States v. Vasquez, 597 F2d 192 (9th Cir. 1979).

The court must conduct an inquiry into the prejudicial potential of the extraneous material on the average juror. Therefore, objective facts become the focus of the inquiry. Courts have considered relevant the following: (1) Whether the extrinsic material was actually received, and if so, how; (2) the length of time it was available to the jury; (3) The extent to which the jury discussed and considered it; (4) Whether the extrinsic material was introduced before a verdict was reached, and if so, at what point in the deliberations it was introduced; and (5) any other matters which bear on the issues of the reasonable possibility of whether the introduction of extrinsic material affected the jury. Bayramoglu v. Estelle 806 F2d 880, 887 (9th Cir. 1976).

The ABA minimum standards, following the case of Parker v. Gladden (1966) 385 U.S. 363, 17 Law Ed 2d 420, provides that, subject to the limitation against inquiry into jurors mental processes, "A jurors testimony or affidavit shall be received when it concerns (i) whether matters not in evidence came to the

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attention of one or more jurors, under circumstances which would violate the defendant's Constitutional right to be confronted with the witnesses against him; or (ii) any other misconduct for which the jurisdiction permits jurors to impeach their verdict."

Of all the areas of juror misconduct the area which most directly impacts upon defendant Bernabe-Ramirez is the fact that some of the jurors were reading newspaper articles concerning current events surrounding the case. More specifically these jurors were aware, early on in the case, that Agent Berrellez, was subject to arrest by Mexican law enforcement. This information could only have been obtained through media accounts. In addition, the media had portrayed Agent Berrellez as a hero. In fact, Agent Berrellez' public stature as a hero and concern for his safety was adopted by these jurors to the extent every time Agent Berrellez failed to appear in court these jurors worried that he had been abducted by Mexican law enforcement. In the jurors' mind Agent Berrellez was not only a heroic but a sympathetic figure, who, as the focal witness against defendant, possessed extra-ordinary, if not unassailable credibility. The defense was certainly unaware of Agent Berrellez' elevated status and, therefore, had no opportunity to overcome his media enhanced credibility. In effect, whatever Agent Berrellez told the jury they would believe. Any defense effort to the contrary, was pre-empted. Had the jurors followed the court's admonition to refrain from media coverage of the case the defendants attack on Agent Berrellez' credibility and Leyenda tactics would have been heard by unprejudiced minds.

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1           Defendant's Mexican Confession, Defense Exhibit IIII

2           Denial of evidence favorable to the defendant which  
3 results in prejudice to the defendant is a proper subject of a  
4 motion for a new trial. Wynn v. United States 395 F2d 621 (D.C.  
5 Cir. 1967). Defendant's Exhibit marked for identification as  
6 "IIII" was sought to be introduced by defendant, through his  
7 direct testimony at trial. Defendant's IIII is a statement  
8 (hereinafter referred to as defendant's Mexican declaration)  
9 given to the Mexican law enforcement authorities who arrested  
10 defendant in April of 1985. Said statement among other things  
11 acknowledges that defendant worked for Ernesto Fonseca as a  
12 bodyguard, knew that Fonseca was involved in narcotics activity,  
13 identified various properties owned by Fonseca, and acknowledged  
14 that he accompanied Fonseca to Puerto Vallarta as a result of  
15 Fonseca's involvement in agent Camarena's abduction and homicide.

16  
17           The prosecution, in its case in chief, sought to establish  
18 through agent Berrellez that defendant had deceived the arresting  
19 Mexican authorities, and thereby gained his freedom, by posing as  
20 a "mere servant." In fact, Agent Berrellez testified that  
21 defendant had lied to his Mexican interrogators by denying  
22 knowledge of Fonseca's narcotics activity, that Fonseca was  
23 involved in the Camarena matter, that he provided addresses to  
24 Fonseca's properties, or that he was a bodyguard. During cross  
25 examination defendant attempted to establish that Agent Berrellez  
26 was familiar with defendant's Mexican declaration and, therefore,  
27 was aware that defendant's statements concerning being a "mere  
28 servant" were in fact false. The trial court denied defendant's

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1 attempts to introduce defendant's Mexican declaration through  
2 Agent Berrellez' testimony.  
3

4 Defendant then attempted during his case in chief to  
5 introduce his Mexican declaration through the introduction of the  
6 actual statement, to wit: Defendant's Exhibit IIII. Defendant  
7 testified and laid a proper foundation for said exhibit.  
8 However, when defendant sought the admission of Exhibit IIII said  
9 admission was denied on the basis that the court had previously  
10 ruled on the matter during Agent Berrellez' testimony.  
11

12 The reasons which might have supported the denial of  
13 further inquiry during the Government's case in chief were  
14 inapplicable in seeking the admission of said evidence during  
15 defendant's case in chief.  
16

17 The defendant's Mexican declaration is admissible under  
18 any one of three theories pursuant to Federal Rules of Evidence,  
19 either Rule 801(d)(B), or Rule 803(24), or Rule 106.  
20

21 Generally speaking, a witness cannot be corroborated on  
22 direct or redirect examination or rebuttal by proof of prior  
23 statements consistent with his in court testimony. However,  
24 under certain circumstances the probative value of a prior  
25 consistent statement clearly warrants introduction. Rule  
26 801(d)(1)(B) provides that a prior consistent statement of a  
27 declarant testifying at trial subject to cross examination  
28 concerning the statement is admissible when offered to "rebut an

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express or implied charge against him of recent fabrication, improper influence or motive." See Breneman v. Kennecott Corp 799 F2d 470, at 473 (9th Cir. 1986). Thus to rebut an express or implied charge that the witness is motivated or has been influenced to testify falsely or that his testimony is a recent fabrication, evidence is admissible that he told the same story before the motive or influence came into existence or before the time of the alleged fabrication. United States v. Feldman, 711 F2d 758 at 766 (7th Cir. 1983). The prior consistent statement is defined as not hearsay, and thus is admitted as substantive evidence. See Advisory Committee's Note to Rule 801(d)(1)(B). See also United States v. Quinto, 582 F2d 224 (2nd Cir. 1978), and United States v. Herring, 582 F2d 535 (10th Cir. 1978).

14  
15       Rule 803 (24) provides:

16            "The following are not excluded by the  
17            hearsay rule, even though the declarant  
18            is available as a witness;

19       (24) Other exceptions. Statement not  
20       specifically covered by any of the foregoing  
21       exceptions but having equivalent circumstantial  
22       guarantees of trustworthiness, if the court  
23       determines that (A) the statement is offered as  
24       evidence of material fact; (B) the statement is  
25       more probative on the point for which it is offered  
26       than any other evidence which the proponent can  
27       procure through reasonable efforts; and (C) the  
28       general purposes of these rules and the interests

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1                   of justice will best be served by admission of the  
2                   statement into evidence. However, the statement  
3                   may not be admitted under this exception unless the  
4                   proponent of it makes known to the adverse party  
5                   sufficiently in advance of the trial or hearing to  
6                   provide the adverse party with a fair opportunity  
7                   to prepare to meet it, his intention to offer the  
8                   statement and the particulars of it, including the  
9                   name and address of the declarant.

10  
11                  In the present case it was the Government who provided  
12                  defendant's Mexican declaration several months prior to trial.  
13                  It was Agent Berrellez who testified that when he in his  
14                  undercover capacity , interviewed defendant in July of 1989, he  
15                  was familiar with defendant's Mexican declaration.

16  
17                  Defendant's Mexican declaration was evidence of a material  
18                  fact, namely, that he had not portrayed himself as a "mere  
19                  servant" to the Mexican authorities. The evidence in the Mexican  
20                  declaration is clearly probative on the issue of whether  
21                  defendant portrayed himself as a "mere servant" to the Mexican  
22                  authorities. The interests of justice would be served by the  
23                  admission of defendant's Mexican declaration to the extent that  
24                  the Government portrayed to the jury that defendant lied in his  
25                  representations to the Mexican authorities. The Government knew  
26                  all the while that defendant had never portrayed himself to the  
27                  Mexican authorities as a "mere servant."

28

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1           Lastly, Rule 106 provides:

2           "When a writing or recorded statement  
3           or part thereof is introduced by a party,  
4           an adverse party may require the  
5           introduction at the time of any other  
6           part or any other writing or recorded  
7           statement which ought in fairness be  
8           considered contemporaneously with it."

9  
10          The rule recognizes that misleading impressions can be  
11          created by taking matters out of context. The Government in its  
12          case in chief attempted to portray defendant's statement to  
13          Mexican enforcement as a lie, namely, that defendant secured his  
14          freedom from Mexican law enforcement because he portrayed himself  
15          as a "mere servant." The Government further contended that  
16          defendant was attempting to pull the wool over the eyes of this  
17          jury in the same manner as he successfully pulled it over the  
18          eyes of the Mexican authorities. It is clear that Agent  
19          Berrellez was fully aware of defendant's Mexican declaration and  
20          that in fact defendant did not attempt to deceive Mexican law  
21          enforcement but rather gave an accurate view, consistent with his  
22          testimony at trial, of his association with Ernesto Fonseca. In  
23          disallowing the admission of defendant's Mexican declaration the  
24          jury was left only with the Government's version of the facts,  
25          namely, that defendant had lied to the Mexican authorities  
26          concerning his involvement with Fonseca and was deceiving the  
27          jury just as he had the Mexican authorities.

28

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1

CONCLUSION

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Therefore, for the above-stated reasons defendant  
respectfully requests that this court grant his motion for a new  
trial.

3

DATED: August 24, 1990

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Respectfully submitted

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BRIDGMAN, MORDKIN, GOULD & SHAPIRO, INC.

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BY:

MICHAEL S. MEZA and MARY KELLY  
Attorneys for Defendant Bernabe-Ramirez

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